

Attachments

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OLGA TARASENKO, M.D., PH.D.
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RESEARCH INTERESTS

PROFESSIONAL POSITIONS

| | |
|------------|--|
| 2015 | IQEdu-Scientific USA |
| 2011–2014 | Associate Professor, Department of Biology, University of Arkansas at Little Rock, Little Rock, AR, U.S.A. |
| 2005–2011 | Assistant Professor, Department of Biology, University of Arkansas at Little Rock, Little Rock, AR, U.S.A. |
| 2002–2005 | Group Leader, Othmer Department of Chemical and Biological Sciences and Engineering, Polytechnic Institute of New York University, Brooklyn, NY, U.S.A. |
| 2001–2002 | Research Scientist, Department of Chemical Engineering, Chemistry, and Materials Science, Polytechnic Institute of New York University, Brooklyn, NY, U.S.A. |
| 1999–2001 | Research Scholar, Department of Human Genetics, School of International Health, University of Tokyo, Japan |
| 1993–2001 | Head of Department of Immunological Tissue Typing, Kyrgyz Blood Bank, Bishkek, Kyrgyz Republic |
| 1993–1998 | Researcher, Kyrgyz Research Institute of Tuberculosis, Department of Immunology, Bishkek, Kyrgyz Republic |
| 1993–1998 | Independent expert on paternity, maternity, and children mismatch identifications, Ministry of Justice/ Ministry Healthcare of Kyrgyz Republic |
| 1990 –1993 | Physician, Department Immunology, Kyrgyz Blood Bank, Bishkek, Kyrgyz Republic |

ADVANCED COURSES AND CERTIFICATIONS

1. Arkansas Associate for the Assessment of Collegiate Learning Annual Conference, University of Arkansas Little Rock, Donaghey Student Center, March 18, 2010
2. Arkansas Research and Education Optical Network, DSC, March 18, 2010
3. Academy for Teaching and Learning Excellence (ATLE), February 18-19, 2010
4. Arkansas NSF EPSCoR Annual Conference, October 2-3rd, 2009, Doubletree Hotel, Little Rock, Arkansas
5. Certificate of attendance and participation in the EHRLICH II, 2nd World Conference on Magic Bullets. Nürnberg, Germany October 2nd-5th, 2008.
6. Certificate, University of Arkansas for Medical Sciences College of Medicine and Accreditation Council for Continuing Medical Education (ACCME) during the International Society for the Prevention of Tobacco Induced Diseases, "Translational Approaches to the Prevention of Tobacco Induced Diseases" Little Rock, AR, 2-4th, November 2007 (credit form submitted on Nov. 3rd, 2007)
7. Certificate, American Society for Microbiology and Accreditation Council for Continuing Medical Education (ACCME) ID#0000159 (23.5 AMA PRA Category 1 Credit). 5th ASM Biodefense and Emerging Diseases Research Meeting, Washington DC, February 27th - March 2nd, 2007
8. Certificate, An Infocast Conference "Bio-chem defense vaccines and therapeutics. Arlington, VA. April, 2005
9. Certificate "Glycomics. Carbohydrates in Drug Development". Cambridge HealthTech Research Inst. April, 2004
10. Certificate, "Introduction to Human Embryonic Stem Cell Culture Methods", WiCell Research Institute, The University of Wisconsin, Madison, 1-3rd May, 2003

11. Certificate, An Infocast Conference "Federal BioDefense Research" Washington DC, Dec. 3-4th, 2002.
12. Certificate, "Japanese Language, culture and affairs course", from April, 1999- to September 1999.
13. Certificate, European School of Transfusion Medicine "Current problems of transfusion medicine in clinical practice". St. Petersburg, Russia, September 6-8, 1993.

SERVICE

| | |
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| 2012 | Reviewer, The Southern Regional Education Board / Bill & Melinda Gates Foundation |
| 2006-2012 | Faculty Senate, UALR, Little Rock, AR |
| 2011-2012 | Organizer Science Olympiad/ Microbiology Section, UALR, AR (April 14 th , 2012 and April 16 th , 2011) |
| 2011 | Founder and Co-Chair, 6 th " <i>BioNanoTox (Biology, Nanotechnology, Toxicology) and Applications</i> " Research Meeting, UALR, AR, November 17-18 th , 2011 |
| 2011 | Organizer, US-Japan BioNanoTox International Program "Exploring the World through Education, Research, and Cultural Exchange", April 27-29, 2011 |
| 2011 | Organizer & Judge, UALR Research Expo, April 2011 |
| 2010 | Organization Committee Member of the 94 th Annual Meeting of the Arkansas Academy of Science, Little Rock, AR, April 9-10, 2010 |
| 2010 | Founder and Co-Chair, 5th " <i>BioNanoTox and Applications Research Conference</i> ", UALR, AR, November 4-5 th , 2010 |
| 2010 | Reviewer, Lisa Academy, Microbiology section, Little Rock, AR (11 students) |
| 2009-2010 | Thomsen-Hall Award Committee, UALR (review 17 proposals) |
| 2009 | American Society for Microbiology, Mentor |
| 2009 | "Faculty Senate AdHoc Committee to Study IRB", UALR |
| 2009- | Editor of " <i>BioNanoTox (Biology, Nanotechnology, Toxicology) and Applications</i> ", American Institute of Physics |
| 2009 | Founder and Co-Chair, 4th " <i>BioNanoTox (Biology, Nanotechnology, Toxicology) and Applications</i> " Research Meeting, University of Arkansas for Little Rock, AR, 21-22, October 2009 |
| 2009 | Reviewer, Lisa Academy, Microbiology section, Little Rock, AR (11 students) |
| 2009 | Organizer of " <i>BioNanoTox Summer Research Camp</i> " with TRIO partner (Total applicants 21; worked with- 12 students) June 14-25, 2009 |
| 2009 - | Member, Editorial Board, "Mathematical Morphology Biomedical Journal" Smolensk Medical State Academy, Russia http://www.smolensk.ru/user/sgma/MMORPH/TITL.HTM |
| 2008 | Founder and Co-Chair, 3 rd " <i>BioNanoTox (Biology, Nanotechnology, Toxicology) and Applications</i> " Research Meeting, University of Arkansas for Little Rock, AR, 23-24 th , October 2008 |
| 2008 | Moderator, Session V: <i>Invited Lecture "Nanoparticle Research at the Interface of Nanotechnology, Biotechnology and Toxicology.</i> 3 rd Annual " <i>BioNanoTox (Biology, Nanotechnology, Toxicology) and Applications</i> " Research Conference, UALR, AR, 23-24 th , October 2008 |
| 2008 | Chair and Invited speaker, EHRLICH II, 2 nd World Conference on Magic Bullets. EHRLICH II, 2 nd World Conference on Magic Bullets. Celebrating the 100 th Anniversary of the Nobel Prize awarded to Paul Ehrlich, Nürnberg, Germany October 2 nd -5 th , 2008 (Session: Vaccines & Anti-invectives) |
| 2008 - | Reviewer, Scandinavian Journal of Immunology |
| 2008 | Organizer of " <i>BioNanoTox Summer Research Camp</i> " under the American Society of Microbiology UTF program (Total applicants 8; worked with- 8 students), June 23-27; and with TRIO partner (Total applicants 21; worked with- 8 students), June 9-13, 2008 |
| 2008 | Mentor of Minority Students, American Society for Microbiology, Washington DC |
| 2008 | Reviewer, Lisa Academy, Microbiology section, Little Rock, AR (11 students) |

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| 2007- | Mentor, Ronald E. McNair Scholars Research Program |
| 2007- | Faculty Senate AdHoc Committee to Study Tenure and Academic Freedom. |
| 2007-2013 | IACUC Committee Member, University of Arkansas at Little Rock, Little Rock, AR |
| 2007 | Organizer and Co-Chair of the 2 nd Annual "Biology, Nanotechnology, Toxicology (<i>BioNanoTox</i>) and Applications" Research Conference. UALR, April 26-27 th , 2007 |
| 2006 - | Reviewer, U.S. Civilian Research and Development Foundation, Arlington, VA |
| 2006 | Reviewer and Judge, Arkansas Junior Academy of Science, February 2006 (13 students) |
| 2006 | Judge, Poster Session at the IDeA Networks of Biomedical Research Excellence Undergraduate Research Conference. University of Arkansas, Fayetteville, AR. November 3-4 th , 2006 (20 students) |
| 2006- | Associate Doctoral Faculty Status in the Applied Science Doctoral Program, UALR |
| 2006 | Invited lecture "Groundbreaking sugars" for the Congressional Staff, Representatives, and District Directors, UALR, Little Rock, AR, June 19, 2006 |
| 2006 | Organizer of "BioNano Tox (Biology/ Nanotechnology/Toxicology)" 1 st Annual Meeting in collaboration with the National Center for Toxicological Research, Jefferson, AR; University of Arkansas Medical Sciences, UALR, Little Rock, AR |
| 2006- | Curriculum Committee, Department of Biology, UALR |
| 2006 | Organizer of "BioNano Tox Summer Research Camp" for high school students and with TRIO ETC partners (Total applicants 21; worked with- 7 students) |
| 2006 | Organizer of the research informational session for International visitors of the Arkansas Council for International Visitors, International of the Bureau of Educational and Cultural Affairs, and U.S. Department of State |
| 2006 | Science Workshop at the Department of Biology with TRIO ETC partners, UALR, September 13, 2006 |
| 2006- | Webmaster and designer of the Biology Club, BioNano Tox Research Camp websites and 1 st Annual "BioNanoTox and Applications" Web newsletter |
| 2005- | Award Committee, Department of Biology, UALR |
| 2005 -2012 | Advisor of the Biology Club, University of Arkansas at Little Rock, AR |

FUNDRAISING ACTIVITIES

2007-2011

Annual "BioNanoTox and Applications" Research Conference, Little Rock, AR \$22,320.00

VISITING SCIENTIST

| | |
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| 1993 | Research Institute of Hematology and Blood Transfusion (St-Petersburg, Russia) Major Field: Screening anti-HLA reagents; Paternity testing; and Advance training selection identical donor-recipient pair for blood transfusion, organ and tissue transplantation |
| 1992 | Research Institute of Hematology and Blood Transfusion (St-Petersburg, Russia) Major Field: HLA-A, B, C, and DR typing; selection donors for blood transfusion, organ and tissue transplantation |
| 1991 | Union Hematological Center (Moscow, Russia) Major Field: "MHC (Major Histocompatibility Complex) and Population Genetics" |

PUBLICATIONS

1993 – 2015 78 papers, 2 patents, 2 patent applications, 2 reviews, 2 book chapters, and more than 180 abstracts in the conference proceedings

AWARDS, HONORS

2012 Nominee, Faculty Excellence in Teaching
2009 Faculty Exchange Program, University of Graz, Austria, May 9th-25, 2009
2009 American Society for Microbiology Certificate for Outstanding Service as Online Mentor of the ASM Minority Mentoring Program
2009 Certificate Appreciation for Outstanding Leadership and Lasting Contribution McNair Scholar Program
2008 Certificate "Excellence in mentoring", McNair Scholar Program
2008 Certificate of appreciation "Mentoring Minority Students", American Society for Microbiology, Washington DC
2007 Certificate "Excellence in mentoring", McNair Scholar Program
2007 Kathleen Thomsen Hall Charitable Trust Grant
2007 ORGS Travel Grant Award, University of Arkansas at Little Rock, AR to American Society for Microbiology and Biodefense Research Meeting, Washington DC, MD
2007 Arkansas INBRE Travel Award for the Fourth Conference of the MidSouth Computational Biology and Bioinformatics Society February 1-3rd, 2007 New Orleans, LA.
2007 Marquis Who's Who of American Women, 2007
2006 - Reviewer, U.S. Civilian Research and Development Foundation, Arlington, VA, USA
2006 Arkansas INBRE Travel Award for the Third Conference of the MidSouth Computational Biology and Bioinformatics Society March 2-4th, 2006 Baton Rouge, LA.
2004 Governmental Prize, *"Exceptional inventions during the period of 2003-2004"*, Government of Kyrgyz Republic, State Agency of Science and Intellectual Properties
2002 Award and AICHE / ACS Certificate of Appreciation, Polytechnic University, New York, NY
1999 - 2001 Scholarship/research fund, Asian Development Bank, Manila, Philippines
1994 - 2002 Certificates of appreciation and monthly bonuses by Ministry of Health of Kyrgyz Republic
1993 GEM Travel Grant for European School of Transfusion Medicine
1993 Interdisciplinary Fellowship, Research Institute of Hematology and Blood Transfusion (S-Petersburg, Russia)
1992 Interdisciplinary Fellowship, Research Institute of Hematology and Blood Transfusion (S-Petersburg, Russia)
1991 Interdisciplinary Fellowship, Union Hematological Center (Moscow, Russia)
1990 First place and award, Medical Student Conference, Kyrgyz State Medical Academy

MEMBER OF SOCIETIES

American Chemical Society (2002-); BioNanoTox International Society (2008-12); American Society for Microbiology (2006-), Member of the MidSouth Computational Biology and Bioinformatics Society (2006 – 2012); Sigma Xi Scientific Research Society (2003 – 2012); American Society Biology and Biochemistry (2002-10); Administrative Assistant of Kyrgyz Society of Allergy and Immunology (1996-12); Member of Kyrgyz Society of Allergy and Immunology; Kyrgyz Society of Hematology and Blood transfusion (1990-2002)

PATENTS

1. **Tarasenko O.** Destruction of spores through glycoconjugate enhanced phagocytosis (**2007**) U.S. Patent #8,383,084 issued on **Feb. 26, 2013**.
2. **Tarasenko O.** M., Kitaev M. I., Alisherov A. Sh., Razorilova S.P. (**2004**) A prognostic method of chronic tuberculosis progression in Kyrgyz. Kyrgyz Patent # 943 issued on **March 30th, 2007**
3. **Tarasenko O.**, Levon K. Inhibitors of sporeforming pathogens. (**2007**) US Utility and PCT patent applications submitted in Oct. 2005. (U.S. provisional patent application submitted).
4. Levon K., **Tarasenko O.**, and Bin Yu. Glycoconjugate Sensors (**2004**) U.S. Patent Application

Serial No.: 20040161861 (U.S. provisional patent application submitted)

5. **Tarasenko O. M.**, Razorilova S.P., Kitaev M. I., Alisherov A. Sh. (2004) Outcome of chronic tuberculosis in lungs. (Provisional patent application # 1565, May 2004/Kyrgyz Republic)

COMPETITIVE RESEARCH GRANTS RECEIVED

1. Arkansas Science & Technology Authority, National Science Foundation (grant #EPS-0701890), Winthrop Rockefeller Foundation (grant #09-0522) "From educational to scientific perspectives: sugar polymers in biology and their applications."
2. National Science Foundation EPSCoR RII Grant, "Arkansas ASSET Initiative" (#EPS-1003970) and the Arkansas Science and Technology Authority; "Does M1 or M2 macrophages impact *Bacillus anthracis* spores infection and effective treatment by carbohydrate-based compounds "
3. Ministry of Education, Culture, Sports, Science and Technology, Japan, 2012 US-Japan BioNanoTox International Program "Exploring the World through Education, Research, and Cultural Exchange"
4. NIH / Department of Health and Human Services, Food and Drug Administration, grant # 2R13 FD004002-02, "The 6th through 10th BioNanoTox and Applications Research Conference"
5. ICO, Washington DC, "Glycoconjugates inhibit *Toxoplasma gondii*"
6. McNair Program: "Cytokines assessment and their associations with M1 and M2 type of macrophages during *in vivo* phagocytosis of *B. anthracis* Spores" Tarasenko, PI/ Bonney, Investigator
7. ICO, Washington DC, *Glycoconjugates inhibit Toxoplasma gondii*"
8. Ministry of Education, Culture, Sports, Science and Technology, Japan, 2011 US-Japan BioNanoTox International Program "Exploring the World through Education, Research, and Cultural Exchange"
9. Arkansas Science & Technology Authority, National Science Foundation (grant #EPS-0701890), Winthrop Rockefeller Foundation (grant #09-0522) "From educational to scientific perspectives: sugar polymers in biology and their applications." Tarasenko, PI
10. "Carbohydrate Based Conjugates Enhanced Phagocytosis and Killing of *B. anthracis* Spores Ex Vivo" McNair Program: Tarasenko, PI / Bonney, Investigator
11. Istanbul Kultur University, Istanbul, Turkey; Internship Grants: Hacer Esra Gurses and Zeynep Ekici
12. "Macrophage differentiation upon GC1-18 treatment", Research Award; Tarasenko, PI
13. "Recognition of *T. gondii* using Glycoconjugates 4,6, 9 during 24-48 hrs of infection", Research Award; Tarasenko, PI/ "Eassa, Investigator
14. NIH / Department of Health and Human Services, Food and Drug Administration, grant # 1 R13 FD004002-01, "The 5th BioNanoTox and Applications Research Conference", Little Rock, Arkansas
15. "Role of glycoconjugates on germination and growth of rice exposed to *B. cereus* spores" McNair Program: Tarasenko, PI / Sabb, Investigator
16. McNair Program: "Role of glycoconjugates on plant germination, growth, and resistance to bacterial infection caused by *B. cereus* spores" Tarasenko, PI / Dickerson
17. Arkansas Science & Technology Authority, National Science Foundation (grant #EPS-0701890), Winthrop Rockefeller Foundation (grant #09-0522) "From educational to scientific perspectives: sugar polymers in biology and their applications."
18. NIH / Department of Health and Human Services Food and Drug Administration, grant # 1R13FD003797 -01, *The 4th BioNanoTox and Applications Research Conference*, Little Rock, Arkansas
19. American Society for Microbiology International Fellowship Program, "Glycoconjugates promote spore killing in soil and on plants" Tarasenko, PI
20. "Role of glycoconjugates on plant germination and growth" McNair Program: Tarasenko /Dickerson
21. Arkansas Department of Higher Education, SURF, "Simultaneous recognition and inhibition spores and toxins assemblies during phagocytosis" Tarasenko, PI/ Scott, Investigator

22. *Chemical and Biological Defense Physical Science and Technology Travel Grant*. Tarasenko, PI/Mentor, Scott, Investigator
23. EHRLICH II, 2nd World Conference on Magic Bullets Travel Grant (Nürnberg, Germany)
24. Mid America Science Museum Fellowship: Tarasenko, PI/Mentor, Scott, Investigator
25. "Role of glycoconjugates on Caspases release by macrophages exposed to *B. anthracis* toxins and *B. cereus* spores" Tarasenko, PI/ Rodriguez, Investigator
26. American Society for Microbiology, Undergraduate Teaching Fellowship (UTF) Program: "From educational to scientific perspectives: sugar polymers in microbiology." Tarasenko, PI, Mentor/ Scott, Investigator
27. American Society for Microbiology, Undergraduate Research Fellowship (URF) Program: "Simultaneous Inhibition of *Bacillus anthracis* Spores and Toxins During Phagocytosis Using Glycoconjugates", Tarasenko, PI, Mentor/ Scott, Investigator
28. National Science Foundation, EPSCoR MI Grant, "Arkansas ASSET Initiative" (# EPS-0701890), "Glycoconjugates Inhibit Protective Antigen and its Interaction with Anthrax Toxin Receptor"
29. Arkansas Department of Higher Education, SURF, "Glycoconjugates Inhibit Protective Antigen and its Interaction with Anthrax Toxin Receptor" Tarasenko, PI / Castleberry, Investigator
30. American Chemical Society Travel Grant
31. Kathleen Thomsen Hall Charitable Trust Grant, "Recognition and inhibition of *B. anthracis* toxins using glycoconjugates", Tarasenko (PI)
32. "*B. anthracis* toxins recognition and binding using glycoconjugates" McNair Program: Tarasenko/ Jones, Investigator
33. "Does nicotine alter anti-spore mechanism achieved by glycoconjugate?" McNair Program: Tarasenko, PI/ Parsons, Investigator
34. SEED grant 154572, "Do glycoconjugates influence on bacterial spores phagocytosis?"
35. Dean's and ORSP Travel "2007 American Society for Microbiology Biodefense and Emerging Diseases Research Meeting", American Chemical Society Meeting
36. Arkansas INBRE Travel Award for the Fourth Conference of the MidSouth Computational Biology and Bioinformatics Society February 1-3rd, 2007 New Orleans, LA
37. Arkansas Department of Higher Education, SURF, " Elimination of bacterial spores in water using glycoconjugate filters" Tarasenko / Avaritt, Investigator
38. Arkansas INBRE Travel Award for the Third Conference of the MidSouth Computational Biology and Bioinformatics Society March 2-4th, 2006 Baton Rouge, LA
39. DOD/U.S. Army Edgewood Chemical Biological Center (ECBC) contract grant (\$850K annually /2005 – 2007) *Detector development of sporeforming pathogens*, Levon (PI)/ Tarasenko, Co-Investigator
40. Asian Development Bank -Japan Scholarship Program, "Drug resistant tuberculosis, study HLA immunogenetics factors" Tarasenko, Investigator ~\$50,000/annually
41. Ministry Health of Kyrgyz Republic, "Emerging infections - HLA system role and tuberculosis in Kyrgyz population" Alisherov (PI) /Tarasenko, Investigator ~\$10,000/annually
42. Ministry of Health Fund of Kyrgyz Republic, *Donors panel formation for the selection of identical pairs for blood transfusion and transplantation* Tarasenko (PI)~\$10,000/annually
43. Ministry of Health Fund of Kyrgyz Republic, "Establishment of immunological tissue typing services in Kyrgyz Republic" Tarasenko (PI) ~\$10,000/annually

LIST OF PUBLICATIONS

§ corresponding author, co-authored by * high school student; ** high school teacher; ‡ undergraduate; or † graduate student;
 * authors contributed equally to this work

Chemometrics, Sensorometrics, and Qualimetrics:

1. Alusta P. *, Buzatu D., Williams A., Cooper W.-M., **Tarasenko O.** *, Dorey R. C., Hall R., Parker W. R., Wilkes J. G. [§] **(2015)** Instrumental improvements and sample preparations that enable

reproducible, reliable acquisition of mass spectra from whole bacterial cells. *Rapid Communications in Mass Spectrometry*. 29, 21, 1961–1968. DOI: 10.1002/rcm.7299

Phagocytosis:

2. **Tarasenko O.** [§], Scott A. [†], Soderberg L., and Alusta P. [†] (2013) .Glycoconjugates prevent *B. anthracis* toxin-induced cell death through binding while activating macrophages. *Glycoconjugate Journal*. 29, 1, 25-33. DOI: 10.1007/s10719-011-9360-3.
3. **Tarasenko O.** [§], Alusta P., Kazakov S., Levon K. (2012) Properties and Detection Methods of *Bacilli* Spores in Food and in Medical Settings. In *Bacterial Spores: Current Research and Applications*. Chapter 14. Ernesto Abel-Santos (Ed.). Caister Academic Press, Hethersett, Norwich, UK; ISBN: 978-1-908230-00-3
4. Lahiani M. [†], Eassa S. [†], Pavan C. [†], Soderberg L., **Tarasenko O.** [§] (2012) Macrophage viability protection using glycoconjugates during intraperitoneal infection by *Bacillus anthracis*. *Polymeric Materials: Science & Engineering*, 106, 189-190.
5. Eassa S. [†], Soderberg L., Lahiani M. [†], Pavan C. [†], **Tarasenko O.** [§] (2012) Synthetic Carbohydrate-based Polymers Increased Macrophage Resistance during *Toxoplasma gondii* Infection. *Polymeric Materials: Science & Engineering*. 106, 267-268.
6. Lahiani M. [†], Soderberg L., **Tarasenko O.** [§] (2011) Glycoconjugates as mediators of nitric oxide production upon exposure to bacterial spores by macrophages. In: "Biology, Nanotechnology, Toxicology, and Applications". *American Institute of Physics, USA*. 1326; 135-143. ISBN 978-0-7354-0910-1; ISSN 0094-243X.
7. Lahiani M. [†], Soderberg L., **Tarasenko O.** [§] (2011) Nitric Oxide Release and Apoptosis Regulated by Glycoconjugates During *Bacillus cereus* Exposure. *Polymeric Materials: Science & Engineering*. New Concepts In Polymeric Materials, pp. 307
8. Eassa S. [†], Bose C., Alusta P. [†], **Tarasenko O.** [§] (2011) Detection method of *Toxoplasma gondii* tachyzoites. In: "Biology, Nanotechnology, Toxicology, and Applications". *American Institute of Physics, USA*. 1326; 157-165. ISBN 978-0-7354-0910-1; ISSN 0094-243X.
9. **Tarasenko O.** [§], Scott A. [‡], Soderberg S., Ponnappan U. Alusta P. [†] (2010) Killing of *Bacillus* spores is mediated by nitric oxide and nitric oxide synthase during glycoconjugate - enhanced phagocytosis. *Glycoconjugate Journal*. 27, 1, pp.13 - 25 (E-print ahead, doi: 10.1007/s10719-009-9248-7)
10. Rasol A. [†], Eassa S. [†], and **Tarasenko O.** [§] (2010) Binding Affinity of Glycoconjugates to *Bacillus anthracis* Spores and Their Respective Toxins. *PMSE* 102, 130-131.
11. Eassa S., and **Tarasenko O.** [§] (2010) Stimulatory Effect of Polymeric Glycoconjugates on Plants. *Polymeric Materials: Science & Engineering*. 102, 132-133.
12. Pavan C. [‡], Rasol A. [†], and **Tarasenko O.** [§] (2010) From Recognition to Disinfection of *Bacillus cereus* Spores. Environmental Science and Technology. "Microbiology and Microbial Degradation". Starrett S.K., et. al (Eds.) American Science Press, Houston, USA. 2010. ISBN 978-0976885382.
13. Rasol A. [†] Tevebaugh W., Saffel A., Bush J., and **Tarasenko O.** [§] (2010) Control of *Bacillus* Spores by Soil Amoeba *Dictyostelium Discoideum*. Environmental Science and Technology. "Microbiology and Microbial Degradation". Starrett S.K., et. al (Eds.) American Science Press, Houston, USA. 2010. ISBN 978-0976885382.
14. Lahiani M. [‡] and **Tarasenko O.** [§] (2010) Glycoconjugates Effects: Do Gender and Ethnicity Influence Exposure of Pathogen by Peripheral Mononuclear Cells. *Biology, Nanotechnology, Toxicology and Applications*. *American Institute of Physics*. 2010, 1229, 29-34. ISBN 978-0-7354-0773-2; ISBN 978-0-7354-0775-6.
15. Saheb E. [†] and **Tarasenko O.** [§] (2010) Comparative Analysis of Immune Cells Activation and Cytotoxicity upon Exposure Pathogen and Glycoconjugates. *Biology, Nanotechnology, Toxicology and Applications*. *American Institute of Physics*. 2010, 1229, 35-41. ISBN 978-0-7354-0773-2; ISBN 978-0-7354-0775-6.
16. Rasol A. [†], Eassa, S. [†], and **Tarasenko O.** [§] (2010) Binding Affinity of Glycoconjugates to *Bacillus* Spores and Toxins. *Biology, Nanotechnology, Toxicology and Applications*. *American Institute of Physics*. 2010, 1229, 67-72. ISBN 978-0-7354-0773-2; ISBN 978-0-7354-0775-6.
17. Eassa S. [†] and **Tarasenko O.** [§] (2010) Glycoconjugates Influence Caspases Release and Minimize Production of Lactate Dehydrogenase upon Pathogen Exposure. *Biology, Nanotechnology*,

Toxicology and Applications. *American Institute of Physics*. 2010, 1229, 101-107. ISBN 978-0-7354-0773-2; ISBN 978-0-7354-0775-6.

18. Griffin W. O. †§, Hannna J., Razorilova S., Kitaev M., Alisherov A., **Tarasenko O.**, and Darsey J. A. (2010) An Artificial Neural Network Evaluation of Tuberculosis using Genetic and Physiological Data. *Biology, Nanotechnology, Toxicology and Applications. American Institute of Physics*. 2010, 1229, 49-53.
19. Chan Y. §, Bouaynaya N., Chowdhury P., Patterson T. A., and **Tarasenko O. (2010)** Predictive Models of Cognitive Outcomes of Developmental Insults. *Biology, Nanotechnology, Toxicology and Applications. American Institute of Physics*. 2010, 1229, 87-93. ISBN 978-0-7354-0773-2; ISBN 978-0-7354-0775-6.
20. **Tarasenko O.** §, Scott A. ‡, Alusta P. †, Soderberg S. (2009) Recognition and Neutralization of *Bacillus cereus* Spores and *Bacillus anthracis* Toxins during Phagocytosis using Glycoconjugates. *Polymeric Materials: Science & Engineering*. 100, 730-731.
21. Kuo SPT*, **Tarasenko O.** †*, Chang J., Popovic S, Chen CY, Fan HW, Scott A. ‡, Alusta P. †, Lahiani M.‡, Drake JD, Nikolic M (2009) Contribution of a portable air plasma torch to rapid blood coagulation as a method of preventing bleeding. *New Journal of Physics*.
22. **Tarasenko O.** §, Lone S. ‡, Alusta P. † (2008) Defensive and Simultaneous Actions of Glycoconjugates during Spore Decontamination. *Carbohydrate Research*. 343, 2243-2250 doi:10.1016/j.carres.2008.03.038
23. Scott A. ‡, Alusta P. †, Soderberg S., and **Tarasenko O.** § Glycoconjugates Activate Macrophages upon Simultaneous Exposure to Bacterial Spores and Toxins. *Proceedings of the Chemical and Biological Defense Physical Science and Technology* (Accepted, Sept. 2008)
24. Scott A. ‡, **Tarasenko O.** §*, Bush J. *, Alusta P. † (2008) Glycoconjugates activate *Dictyostelium discoideum* bio-machinery during destruction of *Bacillus* spores. In: *Chemical and Biological Defense Physical Science and Technology*.
25. Castleberry J. ‡, Alusta P. †, Soderberg L., Tarasenko O. § (2008) Binding and Neutralization of *Bacillus anthracis* Protective Antigen Toxin and Its Complexes Using Glycoconjugates. *Polymeric Materials: Science & Engineering*. 2008, 98, 841-842. (ISBN 978-0-8412-6976-7, ISSN 1550-6703)
26. Castleberry J., Scott A., Soderberg L., Alusta P., **Tarasenko O.** § (2008) Nitric Oxide Involved in Macrophage Activation and Neutralization of *Bacillus anthracis* toxins during Glycoconjugate Treatment. *Nitric Oxide*. 19, 1, 2008, pp. 1 doi:10.1016/j.niox.2008.06.103
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genes of the HLA complex in Kyrgyz population. *Central Asian Medical Journal*. 3: 28-31

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ABSTRACTS IN NATIONAL, INTERNATIONAL MEETINGS AND CONFERENCES

1993-2013: 187 abstracts (oral and posters) presented

TEACHING EXPERIENCE/ COURSES

University of Arkansas at Little Rock, Little Rock, AR

- BIOL 2401 – Microbiology campus-based course (4 credit hrs)
- BIOL 2401 – Microbiology web-based course (4 credit hrs)
- BIOL 4413/5413 – Immunology (4 credit hrs)
- BIOL 4409/5409 - Pathogenic Microbiology (4 credit hrs)
- BIOL 4499/5499 - Special Topic: *NanoImmunology* (3 credit hrs)
- ASCI 9200/ 9500/ 9700/9800 - Doctoral Research/Dissertation (2 – 8 credit hrs)
- ASCI 8100/8300/8600 - Master's Thesis (1 – 6 credit hrs)
- BIOL 8100/8500 – Thesis Research
- BIOL 4427/5427 – Tissue Engineering (4 credit hrs)
- BIOL 4100/4200/4300/4400 - Independent Study (1 – 4 credit hrs)
- BIOL 4189/ 4289/4389/4489 - Undergraduate Research (1 – 4 credit hrs)

Polytechnic Institute of New York University, NY

- Tissue Engineering
- Biosensors/ BE625
- Youth in Engineering & Science Program
- Glycomics theory and research

Kyrgyz State Medical Academy, Bishkek, Kyrgyz Republic

- Anatomy and Physiology
- Immunogenetics in Blood Transfusion, Bone Marrow, and Organ Transplantations
- DNA Paternity / Maternity /Children Mismatch Testing

INVITED LECTURES AT UNIVERSITIES

1. “Fatal Bullets Controlling Bacillus Spore Inhibition and Toxin Neutralization during Phagocytosis”, EIT and CSAM, University of Arkansas at Little Rock, Little Rock, AR, February 13th, 2009
2. “Department of Biology and BioNanoTox Initiatives”, University of Graz, Austria, May 15, 2009
3. “Do glycoconjugates influence on bacterial spores phagocytosis?” SEED Grant Presentation Sponsored by the Office of Research and Graduate Studies, University of Arkansas at Little Rock, Little Rock, AR, October 26th, 2006
4. “Glycoconjugates for recognition and inhibition of bacterial spores.” Department Physiology and Biophysics, University of Arkansas for Medical Sciences, Little Rock, AR, October 5th, 2006

5. "Groundbreaking sugars" Congressional Staff Meeting at University of Arkansas at Little Rock June 19, **2006**
6. "Bioinformatics approach for vaccine development" ARBIOS First Network Meeting, University of Arkansas at Little Rock, Little Rock, AR, April 27, **2006**
7. "Antibody. Structure and function. Virus capsid antibodies" Othmer Research Institute at the Polytechnic University, NY/ January **2005**
8. "Bacterial spores. Recognition, decontamination, inhibition." University of Arkansas at Little Rock. Little Rock, AR/ December, **2004**
9. "Ligand- Receptor Interactions for Recognition of *Bacillus* Spores and Other Biological Applications." Wright State University, OH/ November, **2003**
10. "Application of atomic force microscopy as complimentary technique for *Bacillus* spores and their carbohydrate interaction studies". Department of Molecular and Experimental Medicine, The Scripps Research Institute, CA/ July **2002**
11. "Systematic review of cells, bacteria and spores. Anthrax pathogenesis and genetic diversity, Lecture for staff, students, Polytechnic Institute of New York University, NY/ November, March **2001**

DEPARTMENT, COLLEGE, UNIVERSITY AND STATE COMMITTEES

| <u>Committee</u> | <u>Nature of Service (Chairman/Member)</u> | <u>Level (Department/College/University)</u> |
|--|---|---|
| Bill & Melinda Gates Foundation | The Southern Regional Education Board | University/ National/ International |
| Faculty Senate | Senator | Department/College/University |
| Biology Club | Advisor | Department/College/University |
| BioNanoTox International Club | Advisor | Department/College/University |
| Curriculum Committee | Member | Department |
| Graduate Committee | Member | Department |
| International Students Emergency Committee | Member | University |
| Undergraduate Counsel | Member | University |
| IACUC Committee | Member | University |
| Committee, <i>Doctor of Philosophy</i> defense of Rakhee Agarwal | Member | College/University |
| Committee, <i>Doctor of Philosophy</i> defense of Ronnie Ridley | Member | College/University |
| Aveen Rasol | Chair/ M.S. Advisor | Department/College/University |
| Mohamed Lahiani | Chair/ M.S. Advisor | Department/College/University |
| Souzan Eassa | Chair/ Ph.D. Advisor | Department/College/University |
| Casey Pavan | Chair/ M.S. Advisor | Department/College/University |
| Committee, <i>Doctor of Philosophy</i> defense of Sushma Thotakura | Member | College/University |
| Kathleen Thomson Award | Member | University |
| BioNanoTox Conference, 2006-2012 | Founder/Chair | University/ National/ International |
| Arkansas Academy of Science Conference, 2010 | Organizer | University/ National/ International |

MENTORED STUDENTS: HIGH SCHOOL UNDERGRADUATES, BACHELORS, MS, AND PHD

2012 Graduate Students: Eassa, Lahiani, Pavan; Undergraduate Research students: Dobbins and Bonney; 26 Japanese and 6 Arkansans participants of the 2012 US-Japan BioNanoTox Program for students and teachers, April 24-26, 2012

2011 Graduate Students: Eassa, Lahiani, Rasol; Undergraduate Research students: Sabb, Ufondu, Pavan; High School Research students: Lee, Jain; 26 Japanese and 6 Arkansans participants of the 2011 US-Japan BioNanoTox Program for students and teachers, April 27-29, 2011

2010 Graduate Students: Eassa, Lahiani, Rasol; Undergraduate Research students: Dickerson, Lahiani, Pavan; High School Research students: Reece, Rice, Butler

2009 Graduate Students: Rasol; Graduate Doctoral Students/ Lab rotations: Mezal, Ali, Kathiar, Villagarcia, Saheb, Al-Karakooly, Eassa; Undergraduate Research students: Lahiani, Scott, Birton, Akpore; High School Research students: Krick, McCray, Krick, Golden, Phifer, Liu; High School Research students: Parsian , Pearson, Cole, Lighter, James, Aadil, Vanley, Caster, Bastidas

2008 Undergraduate Research students: Hester, Scott, Castleberry; High School Research students: Desikan

2007 Graduate Doctoral Students: Howe; Undergraduate Research students: Cannatella , Ward, Hester, Castleberry , Park Kim, Akpore, Jones, McManus, Pauline, Lone, Okuwoash, Bobryshev; High School Research students: Desikan, Montgomery

2006 Graduate Doctoral Students/ Lab rotations: Mahmoud Meena, Majeed Waqar; Undergraduate Research students: Burton, Bobrushev, Rosson, Lone; High School Research students: Desikan, Hunter, Staton, Desikan, Washington, Brown, Brown, Jones, Montgomery

2005 Undergraduate Research students: Avaritt; High School Research students: Desikan

2001-2005
Postdoctoral: Ji Tao, Li Lai, Sharma N.; Graduate Students: Kudasheva D., Bakhtina A., Ahn H., Alok Prabhu, Jdanova, Alusta, Sharmin; Undergraduate Research students: Lai W., Lai H. , Panchenko, Paquiot, Tushana; High School Research students: Shieh

1998-2001
Graduate Doctoral Students: Ardiyants, Elena, Dudenko, Sydikova; Undergraduate Research students: Razorilova, Toktorgazieva

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BACKGROUND AND SUMMARY

Pursuant to University of Arkansas Board Policy 403.14, the University of Arkansas at Little Rock (UALR) appointed a faculty committee (the “faculty appeal hearing committee”) to hear the formal appeal of Dr. Olga Tarasenko. The five member faculty appeal hearing committee was established in November 2012 with membership being drawn from two standing committees of the UALR Assembly and Faculty Senate: one tenured faculty member from the Faculty Appeals Council and four tenured faculty members from the Committee on Tenure.

Dr. Tarasenko’s appeal requested that the faculty appeal hearing committee review recommendations for her dismissal issued in September 2012 by Dean Michael Gealt and Chancellor Joel Anderson. In Dean Gealt’s dismissal recommendation, Dr. Tarasenko was accused of moral turpitude by having done the following:

1. Engaged in threatening behavior and attempted an act of retaliation toward her suspected accuser.
2. Made derogatory and offensive comments regarding culture and national origin of her students.
3. Made false statements to Ms. Wirges during the investigation.
4. Was emotionally abusive and disrespectful toward students.

The faculty appeal hearing committee held hearings between April 15, 2013 and May 2, 2013, with seven days of testimony. Dr. Tarasenko and her legal counsel, Dylan Potts, and Chancellor Anderson and his legal counsel, Jeff Bell, participated in the hearings. Both sides submitted significant amounts of documents and were given great latitude in the calling and examining of witnesses in support of their arguments. The faculty appeal hearing committee admonished both sides that the committee expected each side to present pertinent witnesses and that any hearsay would not factor into the committee’s recommendation absent a proper basis to do so. At the

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conclusion of the seven days of testimony, the faculty appeal hearing committee requested that each side write a summary brief addressing the four charges and supporting their arguments with specific references to the evidence presented.

Based on an examination of the evidence presented in the hearings, including exhibits, testimony and summary briefs, the faculty appeal hearing committee findings are as follows. The committee by a vote of four to one finds that the University has failed to demonstrate that Dr. Tarasenko engaged in any of the four allegations of moral turpitude. Furthermore, the committee by a vote of four to one finds that the discrimination investigation conducted by the Human Resources Officer was seriously flawed and Dr. Tarasenko's due process and faculty rights were substantially violated.

The faculty appeal hearing committee by a vote of four to one recommends that: (a) Dr. Tarasenko's employment at UALR should not be terminated; (b) Dr. Tarasenko's suspension from the UALR campus be lifted and that she resume normal faculty duties, and (c) Dr. Tarasenko be retained on the UALR faculty, with all rights and responsibilities as a tenured Associate Professor reinstated.

POTENTIAL CONFLICT OF INTEREST

Employment decisions should be conducted impartially and in the absence of any involvement in the outcome evidencing a conflict of interest on the part of the ultimate decision maker. Before the faculty member may be deprived of a protected interest, she is entitled as a matter of due process for consideration by someone who is not in a situation that might offer even a temptation not to bring an impartial perspective to the process.

Under Board Policy, the faculty appeal hearing committee provides a report and opinion to the University President and then he acts on the committee's recommendation. Due to no fault on his part—indeed, explicitly pursuant to the Board Policy—the University President previously

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acted in the current case through his involvement in the decision to remove the accused faculty member from campus under the parallel suspension provision of Board Policy. Under the particular set of facts here, however, this procedure now puts the University President in the position of both having been involved in imposing the suspension from the UALR campus in September 2012 and now evaluating this decision by the faculty appeal hearing committee. This may impact the accused faculty member's right to procedural due process.

Ultimately, and perhaps fortunately, the faculty appeal hearing committee is not charged with the responsibility for determining this issue. The faculty appeal hearing committee members feel strongly compelled and honor bound, however, to disclose this concern. The committee has now done so here and proceeds to the merits of the appeal.

BOARD POLICY 403.14

Board Policy 403.14 reads in relevant part (emphasis added):

Appointments, Promotion, Tenure, Non-Reappointment, and Dismissal of Faculty - 403.14
Effective Date: March 27, 1994

Policy

This policy, adopted by the Board of Trustees on February 8, 1980, to become effective on July 1, 1980, supersedes all existing policies concerning appointments, promotion, tenure, non-reappointment, and dismissal of faculty (specifically, Administrative Memorandum No. 43, dated August 31, 1962; University-wide Administrative Memorandum 421.1, dated December 6, 1976; University-wide Administrative Memorandum 450.1, dated November 17, 1975; and Board Policy 405.1, dated September 1, 1962, and revised). ...

Copies of this statement of policies shall be kept by the dean of each college or school and by each department head or chairperson or other appropriate official and shall be included without change or interlineation in the *Faculty Handbook* for each campus. Care shall be taken to insure that each faculty member is familiar with its contents, and the department chairperson or other appropriate official shall supply a copy to each new member.

I Definition of Terms

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For purposes of this policy, the following definitions shall apply:

Dismissal: *Dismissal is severance from employment for cause after administrative due process as specified in Section IV.C. Non-reappointment is not a dismissal (see further).*

- **Tenure:** Tenure is the right of continuous appointment. It is awarded by the president to eligible members of the faculty upon successful completion by each of a probationary period and, once granted, it ceases to exist only by dismissal for cause according to the procedures in Section IV.C., demonstrably bona fide financial exigency, reduction or elimination of programs, retirement, or resignation. "Cause" is defined as conduct which demonstrates that the faculty member lacks the ability or willingness to perform his or her duties or to fulfill his or her responsibilities to the University; examples of such conduct include (but are not limited to) incompetence, neglect of duty, intellectual dishonesty, and moral turpitude.

IV Tenure, Non-Reappointment, and Dismissal

A. Tenure

- *A faculty or staff member holding tenure rights may be dismissed for cause only after the procedures prescribed in Section IV.C. have been followed.* A tenured person notified that he or she will be so dismissed will, except in cases of moral turpitude, be given notice of dismissal twelve months prior to termination of employment. This provision does not create an award of severance pay, but assumes the full performance of University responsibilities and duties assigned for the period between dismissal notice and final termination.
- No faculty member shall be dismissed or denied reappointment in violation of the following principles of academic freedom, but the observation of the limitations stated herein is the responsibility of each faculty or staff member. Mere expressions of opinions, however vehemently expressed and however controversial such opinions may be, shall not constitute cause for dismissal. The threat of dismissal will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights.

1. The faculty member is entitled to full freedom in research and in the publication of

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results, subject to the performance of his or her other academic duties, but personal research for pecuniary return requires prior approval by the appropriate University authorities and must be in accordance with Board Policy 450.1.

2. The faculty member is entitled to freedom in the classroom in discussing the subject of the course, but should not teach material inappropriate or unrelated to the course.
3. The University faculty member is a citizen, a member of a learned profession, and a member of an educational community. Speaking or writing as a citizen, the faculty member is free from institutional censorship or discipline. However, as a person of learning and as a member of an educational community, the faculty member has a responsibility for awareness that the public may judge the profession and the institution by his or her utterances. Hence, faculty should at all times make an effort to be accurate, exercise good judgment and appropriate restraint, show respect for the opinions of others, and indicate that they are not spokespersons for the institution.

C. Dismissal

This section applies to all faculty members.

1. **Preliminary Proceedings:** When a chairperson or dean has reason to consider a decision to dismiss a person who has tenure rights or an un-tenured faculty member prior to the expiration of an appointment, he or she shall discuss the matter with that person privately. After the discussion, if the decision of the chairperson or dean is to recommend dismissal, he or she shall prepare a statement of the grounds constituting the cause for dismissal and forward it through the chief academic officer to the chief executive officer on the campus, with a copy to the faculty member. If the faculty member requests it within five working days after receipt of the statement, a subcommittee of faculty members, as determined by procedures developed by each campus, shall be named by the chief executive officer to make an informal inquiry into the situation and to effect an adjustment, if possible. If Policies Governing Faculty Service 6-7 no settlement is effected, the subcommittee shall determine whether, in its view, formal proceedings shall be instituted to consider the individual's dismissal, and it shall notify the individual concerned, the chief executive officer of the campus, and other appropriate administrators of its conclusion. If the subcommittee recommends that such proceedings be begun, or if the chief executive officer of the campus, after considering a recommendation of the subcommittee favorable to the individual, decides that a proceeding should be undertaken, action shall be commenced according to the procedures which follow.
2. **Hearing Procedures:** The formal proceedings shall be initiated by a communication addressed to the individual by the chief executive officer of the campus informing him or

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her of the dismissal and the grounds for it, and that, if he or she so requests, a hearing to recommend whether his or her employment by the University shall be terminated on the grounds stated, will be conducted at a specified time and place by a faculty committee constituted as described in Section 4 below. Sufficient time shall be allowed to permit the individual to prepare a defense. The individual shall be informed in detail, or by reference to published regulations, of the procedural rights to which he or she is entitled, including the right to advice of counsel. The individual shall indicate whether he or she wishes a hearing and, if so, shall file with the chief executive officer of the campus within two weeks of the date of the mailing of the communication by the chief executive officer of the campus an answer to the statement of grounds for the proposed dismissal. If the individual does not request a hearing, no further action shall be taken. Further, at the request of the individual the proceedings provided for herein may be terminated at any time after the request for a hearing on written notice to the chief executive officer of the employee's acquiescence in the dismissal. Similarly, the administration may drop dismissal proceedings at any stage.

3. **Suspension:** Suspension of the individual from normal duties or reassignment to other duties during the proceedings will occur only if an emergency exists which threatens harm to the individual, to others, or to the University. Determination of an emergency shall be made by the chief executive officer, in consultation with the president. Such suspension shall be with pay.
4. **Hearing Committee:** The faculty of each campus shall establish a systematically rotated panel of faculty from which hearing committees can be drawn. To hear a particular case a committee, selected from the panel in accordance with campus policies, shall be composed of faculty members of departments not involved in the dismissal. Upon receipt from the chief executive officer of the campus of a copy of the statement of grounds for dismissal, accompanied by the individual's answer thereto, the chairperson of the hearing committee shall conduct hearings and recommend a course of action as provided in Section IV.C.5. 5.
5. **Committee Proceedings:** The committee shall proceed by considering, before the time of the hearing, the statement of grounds for dismissal already formulated and the individual's written response. In addition to the members of the committee, only the person requesting the hearing and his or her representative, the chief executive officer of the campus and/or his or her designee, and witnesses called by the committee are permitted to attend the hearing. Charges contained in the initially formulated statement of grounds for dismissal may be supplemented at the hearing by evidence of new events occurring after the initial communication to the individual which constitute new or additional cause for dismissal. If such supplementary charges are adduced, the committee shall provide the individual with sufficient time to prepare his or her defense.

The chief executive officer of the campus shall have the option to attend or not to attend

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the hearing, and he or she may designate an appropriate representative to assist in developing and presenting the case.

The committee shall determine the order of proof and shall supervise the questioning of witnesses.

The individual shall have the aid of the committee when needed in securing the attendance of witnesses. The individual or his or her representative and the chief executive officer of the campus or his or her designated representative shall have the right within reasonable limits to question all witnesses who testify orally.

The committee will use its best efforts to provide an opportunity for those involved to confront all witnesses, but where this cannot be achieved despite the efforts of the hearing committee, the identity of such non-appearing witnesses, and any written evidence they may have furnished, shall be disclosed to all interested parties during the hearing.

Subject to these safeguards, written statements may, when necessary, be taken outside the hearing and reported to it. All of the evidence shall be duly recorded. Formal rules of court procedure need not be followed, but the committee shall exercise reasonable efforts to protect the rights of the parties in the reception of evidence.

6. **Consideration by Hearing Committee:** The committee shall formulate its recommendation in private, on the basis of the hearing. Before doing so, it shall give opportunity to the individual and the chief executive officer of the campus or his or her designated representative to make oral statements before it. If written arguments are desired, the committee may request them. The committee shall proceed to arrive at its recommendation promptly without having the record of the hearing transcribed when it feels that a just decision can be reached by this means, or it may await the availability of a transcript of the hearing. It shall make explicit findings with respect to each of the grounds for removal presented. The chief executive officer of the campus and the individual shall be notified of the recommendation in writing and a copy of the record of the hearing shall be available to both parties.

A copy of the record of the hearing and the recommendations of the hearing committee shall be furnished to the president of the University for his or her decision. The decision of the president shall be transmitted to the chief executive officer of the campus and to the individual involved.

7. **Consideration by Board of Trustees:** If the decision of the president is appealed to the Board of Trustees, or if the Board of Trustees chooses to review the case, the president shall transmit to the Board of Trustees the full report of the hearing committee, stating its recommendation and his or her own decision. The review shall be based on the record of

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the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or by their representatives. The decision of the Board of Trustees on review shall be final. It shall be communicated to the president and through him or her to the person involved.

Source: UALR Faculty Handbook

EVIDENCE

Based upon these clear rules, the faculty appeal hearing committee instructed the participants as to the procedures that would be followed.

The faculty appeal hearing committee is charged pursuant to the Board Policy to “*exercise reasonable efforts to protect the rights of the parties in the reception of evidence.*” The committee made clear on numerous occasions and in great detail that documents required authentication (a witness to state the source of a document) and, far more importantly, that statements from witness would first require that the party try to call the witness to testify before the committee. To the extent that there were any difficulties in obtaining a witness, the committee, directly pursuant to Board Policy, explicitly and repeatedly stated that it would get involved in the matter. Only if, and after, these important and required procedural steps were followed, could any exceptions be considered—along with their concomitant proscriptions.

Board Policy states: “The committee will use its best efforts to provide an opportunity for those involved to confront all witnesses, but where this cannot be achieved despite the efforts of the hearing committee, the identity of such non-appearing witnesses, and any written evidence they may have furnished, shall be disclosed to all interested parties during the hearing.”

Additionally, while both parties were invited to provide the faculty appeal hearing committee with the documents it might use in the hearing, the advance provision of these documents did not, of course, properly introduce them to the committee. They still were subject to the very authentication and confrontation rights discussed above and at the hearing.

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The Committee explained this to the legal counsel for each side on several occasions: “[T]he presence of a document in either binder alone does not equate with admission/consideration. While you need not formally admit each document individually, we still require the most basic elements of authentication and, as discussed, the satisfaction of basic confrontation/hearsay rights for the substance (truth of the matter asserted) of any statement to be considered.”

Further, the faculty appeal hearing committee provided the following instructions:

CHAIRMAN: I want to put on the record that the committee has offered -- and I don't know to what extent it would be successful, but has offered to both parties in getting witnesses here. To the extent you think witnesses are necessary. I understand that you don't have subpoena power.

UNIVERSITY COUNSEL: I don't ever force students to come to these things.

CHAIRMAN: That's fine. That's your prerogative. But I want to put on the record that if there's relevant information from a student that can only be provided by that student -- and I don't know if that's the case either -- then the only way we could consider that information is that's who had provided it. Now, there may be other ways to introduce --

CHAIRMAN: -- I made it clear that each party -- both parties had the obligation to bring in witnesses if they believe that those witnesses will be helpful and we have the ability to --

UNIVERSITY COUNSEL: I know you have offered to assist in helping them get here, but this panel doesn't have subpoena power or anything like that. When a student tells me, "I'm not comfortable getting involved", I'm not going to make him come. I'm not going to put him in that position. I don't know what your point is.

CHAIRMAN: Here is my point. Here is my point. You are seeking to fire Dr. Tarasenko. If there is evidence to be provided through a student that is necessary to

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come through that student, then I do think it is incumbent upon the University to insist on the student's participation.

The faculty appeal hearing committee's repeated instructions seek to satisfy the explicit and strict requirements of Board Policy regarding confrontation. The right to confrontation, found, *inter alia*, in the United States Constitution, is a core and critical due process right. It requires that an accused—the faculty member here—be given the right to cross-examine (i.e., confront) witnesses. This offers the committee the opportunity to see witnesses to judge their credibility and it offers the opposing party the right to question a witness to see, for example, whether the witness properly observed, recall, and recount the events—in addition to testing the witness' veracity. None of this can be accomplished without the witness present. That is why hearsay—the introduction of testimonial evidence without a live witness—is subject to a general prohibition.

These are basic due process requirements and are dictated by Board Policy. They are also part of a tenured faculty member's contract rights. They are not to be subject to arbitrary rejection.

Neither party was free to ignore these rules and not call a witness, not declare to the faculty appeal hearing committee that it had difficulty obtaining a witness, not permit the "committee [to] use its best efforts to provide an opportunity for those involved to confront all witnesses," as Board Policy states, and then, nonetheless, seek to introduce hearsay documents to avoid the requirements of confrontation. That would violate Board Policy, due process rights and tenure contract rights. That notwithstanding, we have seen the attempt to rely on such material. For example, University Counsel states in its post-hearing submission:

This comment was overheard by students Rachel Dziga, UALR 11: 46, 47; 31: 323-2; and Sirvathsan V. Raghavan, UALR 14:165; 31: 322, who both confirmed the truthfulness of their written statements to Mindy Wirges, Tr. 7:29, 36. Eassa told Gealt, Pellicane, and the others in the May 11 meeting about the comment, Tr. 3:46, 5:192, and

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Dziga told Gealt she heard the comment. Tr. 3:25. Eassa told Wirges about the comment. Tr. 5:127; 6:30-31; 7:20-21. Eassa was very upset. Tr. 5:156. Pellicane was "absolutely astounded" by the comment.

However, University Counsel did not call Dziga or Raghavan as witnesses, nor did University Counsel seek the faculty appeal hearing committee's "best efforts" in having these potential witnesses attend—as Board Policy requires. This is only one example of numerous such instances.

Everyone involved in these proceedings, including the faculty appeal hearing committee members, likely felt at some time some variant of "I'm not comfortable getting involved." Yet, each of us appeared. Indeed, the University Counsel's second-hand oral description of the potential witness' statement is telling. The University Counsel never said that the witness was unavailable or unwilling to testify. Under Board Policy, University Counsel is explicitly not entitled to refuse to call relevant witnesses and then, on its own, effectively rewrite Board Policy and seek to have out-of-hearing untested witness statements considered by the committee in firing a tenured professor. This would be akin to a prosecutor not calling witnesses and victims because of their understandable reticence to get involved. If this were permissible, prosecutors would only call police officers to testify. The defense counsel in such a Kafkaesque world would be relegated to the literally impossible task of trying to cross-examine (i.e., confront) non-existent witnesses.

Due process is undoubtedly inconvenient, indeed, messy, to those seeking to prosecute any case, but it is the core safeguard to those on the receiving end of such proceedings. Of course, as a theoretical matter, professors can be employed in some capacity without tenure rights; or tenure rights could exist in name only by permitting the employer to serve as the prosecutor, judge, and jury. Those are not the case here.

Attempting to rely on untested confrontation-right-violating out-of-hearing statements is the

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archetype of the very action prohibited by Board Policy and due process rights. Similarly, having Gealt, Pellicane and Wirges repeat those hearsay statements is either equally as flawed or even more greatly so, to the extent that the comments have been filtered through multiple individuals in a variant of the children's game of "telephone." Those statements violate Board Policy and their consideration would violate the tenure and due process rights of the faculty member.

OUR ROLE

Board Policy mandates that the faculty appeal hearing committee evaluate evidence and make findings on the four specific charges against the grievant. A core aspect of that function, and particularly relevant and important here, is the determination of credibility.

Credibility—that is, believability—encompasses four basic concepts: veracity, recollection, articulation, and perception. Each of these is evaluated during a witness' live testimony. As such, the faculty appeal hearing committee is uniquely able to view witnesses' responses in context and draw meaning from the various circumstances, including, of course, matters not discernable from the record.

Indeed, an evaluation of witnesses' answers cannot be divorced from the context of the hearing, because credibility must be measured significantly by witnesses' demeanor—as the University's witness, Mindy Wirges, described. Nervousness and cagey behavior cannot be shown from the record. Subtle nuances shape witnesses' believability, including outlook, breathing patterns, hand movements, gestures, pitch, tone, posture, attention, body language, expression, eye contact and voice inflection. A statement may be prone to various meanings, depending on emphasis and other factors. A witness who fidgets and looks in certain directions may be less candid than one who provides a forthright response. Most people are unaware of the messages they convey through the location, positioning and movement of their bodies and, therefore, have no defense mechanism to hide the truth. Simply put, witness demeanor is often more insightful of the

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ultimate truth than his or her words.

Additionally, it is important to evaluate how witnesses react to questions. If a witness was still during a set of questions then changes behavior when confronted with a different topic, this difference may reflect an internal conflict. This is why only trial courts make credibility determinations, as only they view the witnesses.

Black's Law Dictionary defines "adjudication" as the "process of resolving a dispute" or "an agency proceeding in which a person's rights and duties are decided after notice and an opportunity to be heard." This is an apt description, and the faculty appeal hearing committee's role is adjudicative.

Dean Gealt, on behalf of the University, further testified about the role of the Committee:

The good thing about this process is, it's a faculty committee doing the evaluation and making recommendations. To me it's really a faculty process that I am initiating. The seriousness of these charges -- you know, I just feel like -- I feel I have no other options. I would be a poor Administrator if I didn't act upon it and report this and initiate this process because if the faculty finds for you, then, you know, that's fine. That's good. That will clear the air and -- you know, I think make -- if the -- that will stop this process and say that there is nothing in this process that requires dismissal. If the faculty finds against you, their recommendation to the Chancellor might be for dismissal. That's the only thing that can lead to dismissal of a tenured faculty person.

The faculty appeal hearing committee clearly understands that a significant aspect of its role as the only neutral arbiter in the process to hear first-hand the witnesses, make credibility determinations, and present its findings. As faculty, the committee members share a collegial relationship with all faculty, but of equal importance is that each member of the faculty is a member of the collective institution and is empowered to create not only an impression, but a reality, of excellence to all its stakeholders. The committee exists in both worlds and is therefore

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uniquely qualified to be the unbiased adjudicator of fact.

GROUND FOR DISMISSAL

Dean Gealt's September 19, 2012 letter recommending dismissal of Dr. Tarasenko lists four bases for termination. In this recommendation, Dr. Tarasenko is accused of moral turpitude by having done the following:

- Engaged in threatening behavior and attempted an act of retaliation toward her suspected accuser.
- Made derogatory and offensive comments regarding culture and national origin of her students.
- Made false statements to Ms. Wirges during the investigation.
- Was emotionally abusive and disrespectful toward students.

Dr. Tarasenko's counsel used the definition of "moral turpitude" from the 1908 Arkansas Supreme Court case *Ford v. Brinkley* as the University's burden of proof. In contrast, the faculty appeal hearing committee accepts the AAUP definition of "moral turpitude" as "the standard of behavior that would evoke condemnation by the academic community generally." The committee takes the allegations made against Dr. Tarasenko by students and the charges outlined in Dean Gealt's recommendation with the utmost seriousness.

BURDEN OF PROOF

Unfortunately, the faculty appeal hearing committee is unaware of any University of Arkansas document articulating the burden of proof in a matter such as this—the dismissal of a tenured faculty member. And the committee understands that in the last 28 years, this is only the third such proceeding involving the Little Rock campus. Thus, the committee believes it important to be fulsome in our description of our functions and findings.

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All parties, and the faculty appeal hearing committee itself, agree here that the burden of proof is on the University. Whether that burden is the lowest possible—at the preponderance level—or the next step higher—the clear and convincing level—is simply not spelled out. This committee has taken great pains not to overstep its mandate. As such, the committee evaluated initially the University's assertions under the preponderance standard. Should the committee find that the University met this bar, we will then evaluate its actions under the higher standard. If the University fails to meet the lower standard, no discussion of the higher one shall be presented.

FACTUAL DETERMINATIONS

There are two significant areas of factual determination for the faculty appeal hearing committee. First, the committee must find what procedural steps were followed giving rise to the termination letter, as the grievant is entitled pursuant to the faculty handbook to various steps as part of her due-process rights provided by her tenure contract. Second, the committee must determine whether the University met its burden that certain key alleged events occurred.

A. Due Process

There were two somewhat distinct stages in how the University addressed the claims against the accused faculty member. The first stage involved actions of various administrators, and the second involved the Human Resources Office.

In the first stage, various administrators attempted to address the matter. This ad-hoc administrator-run process almost immediately became formal and adversarial. Troublingly, notwithstanding claims to the contrary, some of those involved drew adverse conclusions towards the accused faculty member without sufficient facts or examination. It should be noted that Dr. Al-Shukri was a direct supervisor for Dr. Tarasenko and was the “initial impetus” of the student actions. To the University’s credit, Dr. Al-Shukri was removed from the process very early on, but was also identified in the hearing as being biased and should not be relied upon should he express his opinion.

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To some extent, it appears that the flaws of this administrator-run process led Dean Gealt to seek a new and separate evaluation. His sound judgment in seeking greater expertise to address the matter, combined with a discrimination complaint filed by a Graduate School administrator on behalf of Dr. Tarasenko's doctoral dissertation advisee, who was also the primary complainant in the former process, led to the appointment of a Human Resources Office Employee Relations Manager to investigate. Based on the facts at the time, this seemed perfectly reasonable. After all, Human Resources officers are responsible for applying an organization's policies and procedures and, at times, accumulating evidence for others to determine whether disciplinary action should be taken against an employee.

The Human Resources Office acts on behalf of the University, and is similar to how police would act in a criminal proceeding. It acts on behalf of one party. While it is not an independent actor, the hope is that it acts fairly and properly. And similar to law enforcement, improper behavior undermines its credibility and actions. The faculty appeal hearing committee believes that the Human Resources Office Employee Relations Manager involved in this case significantly failed in performing her professional responsibilities.

Board Policy requires "A faculty or staff member holding tenure rights may be dismissed for cause only after the procedures prescribed in Section [I]V.C. have been followed." One key provision that must be followed requires:

- I. **Preliminary Proceedings:** When a chairperson or dean has reason to consider a decision to dismiss a person who has tenure rights or an un-tenured faculty member prior to the expiration of an appointment, he or she shall discuss the matter with that person privately. After the discussion, if the decision of the chairperson or dean is to recommend dismissal, he or she shall prepare a statement of the grounds constituting the cause for dismissal and forward it through the chief academic officer to the chief executive officer on the campus, with a copy to the faculty member. *If the faculty member requests it within five working days after receipt of the statement, a subcommittee of faculty members, as determined by procedures developed by each campus, shall be named by the chief executive officer to make an informal inquiry into the situation and to effect an*

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adjustment, if possible. If Policies Governing Faculty Service 6-7 no settlement is effected, the subcommittee shall determine whether, in its view, formal proceedings shall be instituted to consider the individual's dismissal, and it shall notify the individual concerned, the chief executive officer of the campus, and other appropriate administrators of its conclusion. If the subcommittee recommends that such proceedings be begun, or if the chief executive officer of the campus, after considering a recommendation of the subcommittee favorable to the individual, decides that a proceeding should be undertaken, action shall be commenced according to the procedures which follow.

As Dean Gealt emphasized, the termination process is faculty driven. The Board Policy makes clear that the faculty member was entitled to an informal inquiry by faculty. This informal inquiry is designed to effect an adjustment in the first instance. If this is unattainable, *the subcommittee shall determine whether, in its view, formal proceedings shall be instituted to consider the individual's dismissal, and it shall notify the individual concerned, the chief executive officer of the campus, and other appropriate administrators of its conclusion.* It is the informal inquiry by faculty that is charged with this critical activity. The informal inquiry faculty subcommittee completed only the most perfunctory investigation limited to reviewing documents provided to the subcommittee by the University and Dr. Tarasenko before issuing a one sentence decision on October 9, 2012: "We have considered all the documentation provided and have reached the unanimous decision that the seriousness of the offenses precludes consideration of alternative solutions."

No evidence was presented during this formal hearing that any prior informal discussions occurred between a chairperson, dean or the informal inquiry faculty subcommittee and Dr. Tarasenko. Had University policy been afforded Dr. Tarasenko early on, the events in this case may have unfolded very differently. The faculty appeal hearing committee cannot ignore this failure. The committee doesn't know whether this informal inquiry designed to effect a resolution would have been successful. Neither the committee nor the University can assume otherwise. The committee also does not know whether this minimal informal inquiry would have "*determine[d] whether, in its view, formal proceedings shall be instituted to consider the individual's dismissal, and it shall notify the individual concerned, the chief executive officer of*

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the campus, and other appropriate administrators of its conclusion.” In addition, neither the committee nor the University can assume that a more comprehensive informal inquiry would have determined whether the dismissal proceedings should have moved forward for adjudication.

These informal proceedings are designed and required to provide an accused faculty member with an abundance of due process, and to prevent the hasty and heavy-handed action of proceeding directly to a formal termination process, as occurred in this case. The policies are designed to create deliberation and reflection, and to provide the opportunity for faculty involvement at this stage in the process. The process is itself substantive. This course of action was substantially disregarded and Board Policy explicitly demands that the faculty member cannot be denied these rights.

Equally, the Faculty Handbook constitutes a critical and core part of the employment contract between faculty members and the University. Non-academic staff have a separate Classified Staff Employee Handbook. Both of these handbooks are clearly listed, side-by-side, on the University’s website. While the policies and procedures for resolving discrimination complaints by the Human Resources Office is the same in both handbooks and complies with University policy 401.6, a critical difference in this case is that the appeal process is not within the purview of the Human Resources Office and is not described in the relevant section of either handbook. The Human Resources Office Employee Relations Manager admitted during cross-examination that she was wholly unaware of the existence of a Faculty Handbook. The faculty appeal hearing committee is gravely concerned that an Employee Relations Manager in the Human Resources Office was not thoroughly familiar with, much less even aware of, this important institutional document and was not trained to make the most basic distinction between such important faculty and staff documents by her supervisors. As a consequence of this institutional ignorance or incompetence, the Human Resources Office Employee Relations Manager improperly referenced the Classified Staff Employee Handbook in her testimony:

Q. So you follow[ed] the staff handbook?

A. Correct.

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Q. And the staff handbook is different than the faculty handbook?

A. Later -- I was not even aware that there was a separate policy for faculty with discrimination cases, so that was kind of news after the fact.

Q: As of today or previously?

A: I have known before today, but I was not aware that there would be differences in how to conduct investigations based on...

Q: And your understanding now is that there are some differences?

THE WITNESS: Yes.

Dean Gealt, who initiated the dismissal proceedings, testified about this important distinction: "We are all members of the faculty and we're different from other employees. We're not just like an administrative assistant. An administrative assistant that goes through the HR process there will be a dismissal."

The Faculty Handbook affords professors vested rights and matches the language and requirements of Board Policy. The failure by the Human Resources Office Employee Relations Manager denied the faculty member her tenure-contract rights. The Human Resources Office employee should have been aware of the faculty handbook and her supervisor should have ensured compliance therewith. This is a fundamental and seemingly systemic breakdown.

During cross-examination, the Human Resources Office Employee Relations Manager admittedly violated numerous substantive provisions in the Faculty Handbook because she believed other concerns to be a priority:

Q. How many student versus professor investigations have you overseen?

A. Probably about six.

Q. And in those instances, and I want to clarify what Carolyn asked you, how many in times were the professors not told, This is the individual that's saying this about you?

A. This would be probably the -- this one would be the only one up to this date that has occurred.

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Q. So she had been told back in May of 2012, we will tell you the names the next time we meet with you. Several months went by. You met with her. She asked you time and time again in the meeting for the names, and you said, I will follow up with you. To your knowledge no one ever followed up with Olga as to why or why not those names have been released?

A. My follow-up was -- because I told her I would follow up with what information I could provide, and I did follow up with the information that I could provide.

Q. Did you -- who was it that you went to to say, Hey, can we share with Dr. Tarasenko the names of the people that are making these allegations?

A. I went to our UALR legal counsel.

Q. If the handbook says that a copy of the complaint together with a copy of these procedures will be presented to the individuals against whom the complaint was filed, would you agree that you didn't comply with that?

A. Yeah, I would have to agree with that.

Q. And it's your testimony that this letter that you sent to Dr. Tarasenko on August 20th, 2012, was your attempt to comply with that policy?

A. It was my professional decision to not provide the statements within the seven calendar days because of the nature of the concerns.

Q. And your professional opinion deviated with University policy; correct?

A. Yes.

Q. And then it also says that you were to present the individual against whom the Complaint is filed with a copy of these procedures. Did you give Dr. Tarasenko a copy of the staff procedures that you were following?

A. No.

Q. Why not?

A. I just did not.

Q. So you didn't follow your policy again?

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A. Correct.

Q. And then it says that the individual has seven calendar days from the time of receipt from the time of the receipt of the complaint to respond. Did you share that with Dr. Tarasenko?

A. I mean, as far as sharing -- I did not share that.

Q. Did you tell Dr. Tarasenko that she had -- seven calendar days from the time of receipt of the complaint, which you said is your August 20th letter marked as 569 to respond to the complaint?

A. No, because she didn't receive it within that time.

Q. All right. Section 2(b), two being Human Relations Investigatorial procedures that you followed. It says that the Human Relations officer, and I'm assuming that's you.

A. Correct.

Q. Will convene an initial hearing involving the complainant, the alleged offender, the alleged offender's supervisor chair to discuss the charges in an attempt to informally mediate a resolution. Did you do that?

A. No.

Q. I'm assuming that if you didn't do that there was no meeting or no record of a meeting?

A. No with my investigation.

Q. And why did you not follow Section 2(b)?

A. Because it was not an appropriate step to take given the allegations, the number of the allegations, and the potential for these -- the international students who had a lot to lose with regard to if there were to be retaliation. It was too risky to do that.

Q. And as of the time that you are making these decisions interpreting policy, were you aware then, and you might have said this earlier, but I want to make sure, were you aware at that time that there was a faculty handbook that had its own grievance or discrimination policy?

A. No.

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Q. Well, we know that what you did here was not consistent with Section F, as far as your recommendations for disciplinary action; correct? You made no recommendations of disciplinary action?

A. Correct.

Q. So my question is did anyone tell you don't follow that --

A. No.

Q. -- part of the policy?

A. No.

Q. Then it says that you will report your findings to, of the investigative committee to the complainant, which you didn't do here; correct?

A. Correct.

Q. The offender, did you report your findings to any of the offenders or the offender?

A. No.

Q: The offender in this context will refer to Olga?

A: Correct.

Q. The supervisor chair, which we said was Dr. Bush?

A. Correct.

Q. You didn't report it to him?

A. Correct.

Q. And then it says in Section G of the policy that you followed that if the complainant or the alleged offender is dissatisfied with the findings they file a rebuttal statement. Did you have any contact with Dr. Tarasenko about her rights to file a rebuttal statement?

A. No. I believe Dean Gealt provided that information.

Q. Do you know that, or were you told that?

A. That was my understanding, because he was the one that met with her to provide a copy of my report.

Q. Listen to my question. Did he tell you that?

A. No.

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Q. Okay. So you don't know if she was told she could file a rebuttal statement or not; do you?

A. No.

Q. And then there is this appeal process in section eight. What is that?

A. That would be -- on the context of if a disciplinary action occurred, it would be following the grievance process. So if something resulted out of an investigation, that the person received a written warning, or a final warning, or termination, they could follow the appeals process, which is the grievance procedures.

Q: Did that happen here?

A: No. I mean, not -- I mean -- I don't know if that's what this is, but it didn't happen with --

Q: Does that refer to this? I mean, I have no idea. I'm asking. Does that second H, does that refer to this procedure here?

A: I mean, I don't know if that's how this has formally been put forth. I'm not sure. I mean, I don't know how it was -- if this is the appeals process for the faculty, then yes.

Q. Did you ever inform Dr. Tarasenko pursuant to Section 3(a) of the staff handbook that, the results of your investigation?

A. No, I did not.

Q. Why not?

A. Because that was being handled through the administration.

Q. For what policy?

A. That was just the course this went. It was not, obviously not on that policy --

Q. Are you aware of a policy --

A. No.

Q. -- that was followed?

A. No.

The Human Resources Office and the Employee Relations Manager did not have authority to

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unilaterally modify those substantive provisions, particularly where such an abrogation of rights may result in the dismissal of a tenured faculty member. Moreover, to the extent that the Human Resources Office employee placed other interests above those of a tenured faculty member's rights contained in the Faculty Handbook, the choice by the University's representative does not inure to the detriment of the faculty member. The faculty appeal hearing committee cannot ignore this failure. The committee doesn't know and cannot know whether these procedures would have produced a different outcome. Neither the committee nor the University can assume otherwise.

To explore this issue deeper, the Human Resources Office Employee Relations Manager did not afford the faculty member her Faculty Handbook rights, because the Human Resources Office employee was more concerned about shielding the complainants. The faculty appeal hearing committee understands and appreciates deeply this consideration. However, we equally understand that such decisions have consequences. For example, we are well aware of those situations where courts have said that even children must testify against accused abusers pursuant to the due-process right to confrontation. The University Board Policy (under which this committee operates) explicitly recognizes faculty members' right to confrontation. If the University violates the Faculty Handbook, such action does not grant license thereafter to selectively implement particular provisions against a faculty member. Here the University effectively seeks to eviscerate the protections afforded tenured faculty found in Board Policy and the Faculty Handbook, yet maintain the tools afforded the University. These two aspects of the rules, however, go together and cannot be parsed.

Even if the faculty appeal hearing committee were to falsely assume that the Faculty Handbook was properly observed, the Human Resources Office Employee Relations Manager woefully mishandled the fact gathering. First, the Human Resources Office employee only interviewed the complainants. However, everyone involved, all witnesses and participants, must be interviewed, and the University recognizes this:

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Dean Gealt's testimony includes the following:

Q: You continue on, "Unfortunately *even if we interviewed everybody involved* you would not be able to sort out the various truths? Why did you make that statement?

A: Neither Pat nor I is trained as an investigator. We're faculty types. We don't have that kind of expertise. I don't think we have the authority, but we certainly don't have the expertise to go in and *evaluate each of these statements* and come to some sort of definitive legal conclusion.

Yet, the Human Resources Office Employee Relations Manager did not properly investigate all the witnesses. The Human Resources Office employee interviewed no witnesses whatsoever beyond those that approached her. She did not approach other students enrolled in the relevant courses whatsoever, such as those who testified before this faculty appeal hearing committee—and who directly contradict the University's witnesses:

Q. And what other students other than witnesses one through five here in the top of the document did you interview?

A. Those were it.

Q. What other students other than identified in one through five of page 246 did you attempt to interview?

A. None. That was it.

Yet, several witnesses testified here who were *never* interviewed by the Human Resources Office Employee Relations Manager. It is easy to obtain *consistent* and persuasive statements if only the complaining witnesses are interviewed. Unfortunately, it is also the archetype of improper investigative techniques. Notwithstanding that this faculty appeal hearing committee includes two trained investigators, even a novice should understand the necessity of interviewing witnesses beyond those that approached the investigator. Failure to do so presents a fatally biased and deeply flawed process.

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Then the Human Resources Office Employee Relations Manager used this massively one-sided investigation to justify its outcome and resist the even potential value of contradictory evidence—before she would have judged the evidence or the witnesses.

Q: I had asked you earlier a hypothetical question whether if another student -- something about another student disagreeing with some of your conclusions. I posed it in a hypothetical, and I would like to keep it in that sense. If you were to come to know now that a student in one of these classes in which one of these events was said to have occurred said it did not occur, what would your, what would you do with that information? What would you want to do with that information?

A: You mean like in retrospect if I were -- if present day it came in, and we acknowledged -- that one of the students I had interviewed had said something?

Q: No, A different student. A different student in the class said some of these events that have been described have not occurred.

A: Well, that would be taken into consideration and would have been identified as part of the report, saying that one individual, you know, stated they did not hear or were unaware of anything happening. And I don't -- it would not -- I don't believe, just kind of hypothetically speaking, it would have changed the course much, because there was such -- the probability was so high with the other statements from the other students that that really would not have had a big impact.

It is exactly this type of self-reinforcing process and justifications that are the most insidious and dangerous. And, indeed, here this theoretical risk manifested itself quite significantly. As if that were not enough, thereafter, the Human Resources Office investigation continued to be deficient on several other grounds.

The Human Resources Office Employee Relations Manager did not properly investigate motive of the accusers in terms of how the students performed in the faculty member's classes:

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Q. In the course of your investigation what steps, if any, did you take to inquire into the historical performance of the students involved?

A. There was really no inquiry into their performance.

Thereafter, the Human Resources Office Employee Relations Manager did not properly investigate motive of the accusers in terms of actions that the faculty member had taken against the students in the faculty member's classes:

Q. Is it fair to say that your investigation did not take into consideration any allegations that Dr. Tarasenko had historically made against Souzan Eassa?

A. Yes.

While not dispositive, these are relevant, particularly when key witnesses against the faculty member were involved in grade disputes and/or subjects of disciplinary action with respect to the grievant.

Thereafter, the Human Resources Office Employee Relations Manager seemed nonplussed by the fact that a student contacted other students asking for statements:

Q. Did that send up a red flag in your mind, that we have a student contacting other students asking for statements?

A. I don't really think that is abnormal, and whether it be a workplace or among students, it would have been concerning if I felt as though it was, you know, compromising their statements or if I would have spoken to that student or the other students if it felt as though there were these mirrored statements or allegations, and that just was not the case.

Q. Are you aware -- strike that. And I believe you said earlier that the one student bringing to you statements of other students is something that was very rare; is that correct?

A. Correct.

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Q. But here in this instance that was something that you felt lend some credibility to the allegation; is that what you said?

A. It is. Yes, it is, and I believe it would in any other circumstance as well.

As discussed, Board Policy states that “[a] faculty or staff member holding tenure rights may be dismissed for cause only after the procedures prescribed in Section [I]V.C. have been followed.” Those procedures were not followed here. Dismissal without satisfying these due process and tenure rights is improper here.

B. The Four Charges

The September 19, 2012 letter of dismissal lists four bases for termination. Pursuant to Board Policy, the faculty appeal hearing committee evaluated each of those (and only those).

1. Allegation of Engaging in Threatening Behavior and Attempting an Act of Retaliation toward Her Suspected Accuser

The University contends that the grievant made certain threatening comments and mimed a gun. Some of these statements are undisputed.

Some of the alleged statements vary drastically even between the University’s own witnesses. Mr. Lahiani says that he saw the miming activity, while the Human Resources Officer says explicitly that Mr. Lahiani asserted that did not see this alleged activity. Undoubtedly, this alleged activity either occurred or it didn’t. However, the University does not meet the minimum burden of proof if its own witnesses cannot supply an even close-to-consistent description of the events. Of course, the University is not obligated to have mirrored witness statements, but such drastic differences on the critical events undermine the University’s position. Moreover, carefully evaluating during the hearing the witnesses’ behavior to adjudge their credibility was crucial and cuts against the University’s position.

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The Human Resources Office Employee Relations Manager responded:

Q: What factors do you use to determine or assess credibility?

A: For this particular situation, because I can, one thing that really was striking to me was that they had submitted the statements. I think I had said this earlier as well, but they had submitted the -- I had already had copies of the statements. They submitted that, I believe, in May. And when I spoke with them, what they verbally told me in their own words without referring to their statement was spot on, but not -- it wasn't like it was rehearsed or memorized, but *it was very consistent*.

However, somewhere in the process, the only fact witness called to this hearing, besides the complainant, Mr. Lahiani, either changed his testimony or the Human Resources Office employee understood part of Mr. Lahiani's statement to be exactly opposite of what he said.

The Human Resources Office Employee Relations Manager responded:

Q: Would it surprise you if he said, if Mohamed Lahiani said recently that he did see the hand gesture looking like a gun?

A: Would it surprise me? No. I mean, I -- you know, I just know what he told me.

Q: Would it contradict the statement he told you?

A: Yes.

Mr. Lahiani testified:

Q: Okay. This is not your statement, but if somebody else says that you could not see whether or not Olga was making a gun statement you would disagree with that statement?

A: I would disagree with that. That one was maybe conflicted by the fact I was in front of the hood and couldn't see what's happening behind me. But the actual statement itself has -- negated itself. It says Lahiani something. Tapped. Yeah. She tapped her. How could I say she tapped Ms. Fassa and could not see if she made a gun? That's really the statement is negating itself. I did not see, but then I saw. That's completely wrong.

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Thus, either a critical witness' statement is either significantly *inconsistent* or the Human Resources Office Employee Relations Manager's recording of a witness' statement is fundamentally flawed. Similarly, Mr. Lahiani stated that a key alleged wrongful statement was a joke, while the only other witness testified to the opposite.

The claim of retaliation is based upon the faculty member's filing of an academic complaint against a student immediately upon obtaining evidence that the student's assertion that the faculty member forced the student to absorb the cost of attending academic conferences was substantially false. As it turned out, the University was not only aware of these conferences—which were seemingly sound educational opportunities outlined in the faculty member's administration-approved syllabi—the University explicitly funded a large portion of the student's travel expenses, the remainder of which was largely funded through the student's home-country government stipend. To the extent that a student had to pay for a portion of legitimate (and University approved) course-related expenses—be they conference attendance, books, lab supplies, etc.—that is to be expected. And the student extended her travels to include her family vacation.

The University contends that since the filing of this academic complaint came after the faculty member was informed of the allegations against her and was told not to contact the allegers—albeit without ever being given a copy of the charges or the names of the accusers—the faculty member's action of copying the student on the academic complaint was nonetheless retaliatory. The faculty member, however, had filed similar academic complaints before, the complaint procedure requires sending a copy to the student, and the faculty member's timing is linked to the receipt of information undermining the student's claims about academic conferences. The faculty member's actions do not demonstrate a pattern of behavior that differs in any way from her previous academic-complaint filings as presented to the faculty appeal hearing committee. Arguably, the faculty member was following proper University procedure in protecting the rights of the student, and the facts, as presented above, seem to support the position of the grievant.

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The committee focused on the pattern of behavior. The committee viewed the behavior as within the norm for this faculty member, and the academic complaint filing in question, in and of itself, did not amount to an act of retaliation. The University has failed to show that these actions were retaliatory.

The faculty appeal hearing committee finds that the University has not met its burden of proof for this charge.

2. Allegation of Making Derogatory and Offensive Comments Regarding Culture and National Origin of Students

The University presented two witnesses to support these contentions, and the faculty member presented several witnesses in response. This is exactly the type of question that relies on credibility determinations. The faculty appeal hearing committee was impressed by, among others, witness Wes Hall, who has no reason to be biased—unlike all of the University’s witnesses and some of the faculty member’s witnesses. Mr. Hall directly refuted the allegations. The faculty appeal hearing committee finds that the University has failed to meet its burden.

The faculty appeal hearing committee also notes that the University has also included statements that are not impermissible, even had they been proven to be made. For example, University Counsel objects to the alleged use of the phrase that students shouldn’t act in a “barbarian” way. Dictionary.com defines barbarian as “uncivilized, crude, or savage.” Students should not act in an uncivilized, crude, or savage manner. Moreover, the historical source of the term does not relate to the national identity of the students whatsoever. Such a statement, had it been made, would not satisfy this charge.

Similarly, University Counsel asserts that the faculty member allegedly advised a student that she need not wear a headscarf in the U.S. Such a statement, had it been made, would be designed to be helpful and informative. France, for example, engaged in a national discussion

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over similar issues and banned *mgabs* in public. Faculty members are free to discuss such issues; the Board Policy states: "Mere expressions of opinions, however vehemently expressed and however controversial such opinions may be, shall not constitute cause for dismissal. The threat of dismissal will not be used to restrain faculty members in their exercise of academic freedom or constitutional rights." This allegation violates the Board Policy.

Additionally, the faculty appeal hearing committee believes that both language barriers and cultural predispositions seem to have shaped the earnest views of the University's witnesses. Mr. Lahiani testified:

Since she [the grievant] doesn't have to stay in the lab she would hand me the key so she doesn't have to leave home basically. And, you know, the first time she jokingly said, "Okay, I'm going to give you the key. Make sure and don't bomb this space up" etc. The first time I smiled for that. It was to make a joke. The second time she repeated it I really felt not good and really made her -- really felt horrible because this is what's done the second time and she repeated the same thing again about not bombing. I don't know what she refers to by saying that. I don't think all the Mohameds are terrorists.

Q: Mohamed, Souzan -- and you may not remember. You had just now mentioned that she said something to the effect of "don't bomb the lab" --

A: The building, yes.

W: The building. I thought it might be -- I thought I heard perhaps testimony that the statement was rather than bomb, blew up. You know? Do you have a strong feeling which one it was or --

A: Either way. It's the same thing.

Q: You equate those as being essentially the same?

A: Exactly. Any terrorism act no matter how its going to be done.

Q: ... do you remember now specifically the words bombing not the words blowing up or blew up?

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A: I'm really confused really because I really did not pay attention to that because all I care about is really terrorism. You know, whatever it was. So you know.

Q: You told Ms. Wirges you heard her say "don't blow it up."

A: Exactly.

Q: I understand that and I understand she may have said that more than once.

A: Okay.

Q: Did she ever use the word bomb or bombing?

A: No.

Advising students not to bomb a lab *versus* not to blow up a lab are two significantly different statements, if made. Advising a student to "not to blow up a lab" is not a statement of terrorism, culture, or national origin. It merely advises caution in the context, among others, of working in a lab. The language barrier here, along with a heightened sensitivity by students, seems to have been a factor here. This separately supports the finding that the burden of proof has not been met on this claim.

Further, the faculty member's history further supports the faculty appeal hearing committee's conclusion. Dean Gealt testified:

Q: Can I just ask in the years you have been at the University and Olga has been there, had this ever come up before?

A: No.

Q: Had you ever have any inklings, you know, this, you know, derogatory way of working with student or anything like that?

Q: I had no indication. I went back and pulled every annual review because I get an annual review from the Chair. I went back and went through all of those. I went back and looked through all the documentation and notebooks and things like that. There is no indication that I could find of anything. There is an occasional comment that, you know,

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she's really hard and occasionally she's short. Everyone gets those. I could probably read reviews for any faculty member here and find that stuff. Nothing that in any way led to this kind of level.

The faculty appeal hearing committee finds that the University has not met its burden of proof for this charge.

3. Allegation of a False Statement to HR Employee

The faculty appeal hearing committee initially notes that we assume that what is meant in the charging document by "false statement" is an allegation of lying. The alternative would be that the charging document asserts that simply getting the facts wrong is a terminable offense. That cannot be the case. For a statement to be a lie, it must be an intentional alteration of a material fact. Thus, if a faculty member, for example, misstates the color of his sweater, whether by accident or, indeed, intentionally, it is ultimately insufficient as a basis for firing a tenured faculty member. Equally, if a faculty member misstates a critical fact out of error, rather than by design, this too cannot result in termination. The committee doesn't believe that either party would suggest otherwise.

Two problems arise in the current matter regarding the allegation of lying made in the charging document. The Human Resources Office Employee Relations Manager that interviewed the accused faculty member asserts that she (the Human Resources Office employee) asked the accused faculty member whether that faculty member had ever been approached about allegations like those that the Human Resources employee was contemporaneously presenting, and that the faculty member said no. The faculty member agrees with this description, in fact. However, the Human Resources Office employee contends that this was a lie.

The Human Resources Office Employee Relations Manager seems to be asserting that the ongoing accusations against the accused faculty member that the Human Resources Office

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employee was again presenting should have been somehow further “disclosed” back to the Human Resources Office employee who had already met with the accused faculty member in a related formal grade appeal from the same complaining student. Indeed, the University has tied these events together on numerous occasions. The Human Resources Office employee, however, now asserts that the failure to repeat jointly known facts constitutes a lie. It does not.

Indeed, on several occasions the Human Resources Office Employee Relations Manager provided testimony that was incredible or reflective of a dramatic departure from proper behavior, particularly for someone whose primary job responsibility is to articulate and implement compliance with University policies and procedures. In light of this, her excessive punctiliousness in this one instance seems somewhat cartoonish.

Moreover, using the logic of the Human Resources Office Employee Relations Manager, every time that the accused faculty member disputed any of the Human Resources employee's assertions, the Human Resources employee might well assert that this is also a lie. This cannot be correct.

The faculty appeal hearing committee finds that the University has not met its burden of proof for this charge.

4. Allegation of Emotional Abuse and Disrespect towards Students

Dean Gealt, who wrote the recommendation for termination, stated that this allegation does not warrant dismissal:

Q: And fourth [charge]?

A: That's probably the one if it stood alone would be sensitivity training [not dismissal].

As such, this element would require no additional analysis. Either its substantiation would justify dismissal or it would not. Termination is not a process of death through a thousand cuts.

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There is no half basis that only when combined with another half basis equals a sufficient justification. The administration has retracted this element as a basis for termination by having the author of the dismissal charges concede that this charge is an insufficient basis.

Nonetheless, evaluating the evidence provided in support of this claim, the faculty appeal hearing committee finds that the University has not met its burden of proof for this charge.

University Counsel presents a separate portion of its argument as "V. MISCELLANEOUS MISTREATMENT OF STUDENTS." No such charge exists in the letter of termination. It seems that these relate to the fourth statement of grounds. To the extent that they do not, they may not be considered, because Board Policy states:

The committee shall proceed by considering, before the time of the hearing, the statement of grounds for dismissal *already formulated* and the individual's written response. ... Charges contained in the initially formulated statement of grounds for dismissal may be supplemented at the hearing by evidence of *new events* occurring after the initial communication to the individual which constitute new or additional cause for dismissal. If such supplementary charges are adduced, the committee shall provide the individual with sufficient time to prepare his or her defense.

Board Policy does not permit the use of charges that are neither in the formulated statement of grounds nor new events.

Moreover, the administrator who drafted the formulated statement of grounds himself has rejected these grounds. In response to a faculty appeal hearing committee member's clarifying question, Dean Gealt said this about these claims:

Q: These four things [of the formulated statement of grounds] are the crux of moral turpitude. The others issues are insubordination. The other irregularities like the FBI, non-disclosure agreements, service learning, volunteering -- those things were really not -- while they may be troubling to you, those were not the reasons for the dismissal;

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correct?

A: That's correct.

Additionally, the faculty appeal hearing committee notes that there was considerable debate over what level of confidentiality should have been required by the faculty member over potential patent rights that she possessed. We will not opine on that intellectual-property question, but we note that the University admitted that it maintains confidentiality agreements for certain individuals involved in contexts the same or similar to those presented here. The result is that the University's position devolves to asserting that, while it recognizes the importance of keeping intellectual property rights secure, the University thought that the faculty member went too far to protect her property rights, in which the University was disinterested, when she requested those viewing that material to sign a non-disclosure agreement, because—as University Counsel contends—“[e]verybody knows they are bound by confidentiality rules.” It’s not surprising that the actual holder of the potentially valuable property thought it deserving of greater protection than the entity that rejected any claim over it, even if that protection was prophylactic and notwithstanding that “[e]verybody knows they are bound by confidentiality rules.” Requiring confidentiality agreements from those who allegedly know that they’re so bound, seems, at worst, duplicative and, at best, a sound precaution in the real world where not everyone, indeed, knows what they should or acts on what they do know. This dispute does not impact a tenured faculty member’s right to continued employment.

Upon examination of these allegations, the faculty appeal hearing committee finds that they do not support the administration’s faculty dismissal decision here.

C. Factual Determinations—Minority Opinion

The above findings represent the majority opinion of the committee. It should be noted that one member of the committee considers the evidence against Dr. Tarasenko to be substantial and believes that the University has met its burden of proof in demonstrating that Dr. Tarasenko did

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engage in the four areas of misconduct outlined in Dean Gealt's recommendation letter for dismissal. The committee's concerns over the Human Resources Office Employee Relations Manager's deviation from the University's procedures for the investigation of complaints of discrimination (delineated in University Policy 401.6) are legitimate. However, the minority view is that this deviation did not compromise the evidence of misconduct. Dr. Tarasenko has been given ample opportunity to address the allegations against her (most notably by this committee) and has been afforded appropriate due process. The minority opinion is that Dr. Tarasenko has demonstrated "a standard of behavior that would evoke condemnation by the academic community." As such, the University is within its rights to dismiss as stipulated in Board Policy 403.14.

CONCLUSION

Based on an examination of the evidence presented in the faculty appeal committee's hearings, including exhibits, testimony and summary briefs, the committee findings are as follows: The committee by a vote of four to one finds that the University has failed to demonstrate that Dr. Tarasenko has engaged in any of the four allegations of moral turpitude. Furthermore, the committee by a vote of four to one finds that the discrimination investigation conducted by the Human Resources Office Employee Relations Manager was flawed and Dr. Tarasenko's due process and faculty rights were violated.

The faculty appeal hearing committee by a four-to-one vote recommends that: (a) Dr. Tarasenko's employment at UALR should not be terminated; (b) Dr. Tarasenko's suspension from the UALR campus be lifted and that she resume normal faculty duties, and (c) Dr. Tarasenko be retained on the UALR faculty with all rights and responsibilities as a tenured Associate Professor reinstated.

This report constitutes the faculty appeal hearing committee's findings. We are sending along with these findings: the original transcripts of the hearing (which were the ones available and

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referenced in the post-hearing submissions), the corrected transcripts, the post-trial submissions, and the documents submitted prior to the hearing—regardless of whether those documents were admitted at the hearing or were considered by the faculty appeal hearing committee pursuant to Board Policy. Reference to the transcript will be necessary to determine whether any particular document was, and should be, considered pursuant to Board Policy.

Joseph Bell
JB Hill
Robert Steinbuch
Carolyn Turturro
Jim Vander Putten

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 18, 2016

Mr. Robert Steven Tschiemer
P.O. Box 549
Mayflower, AR 72106

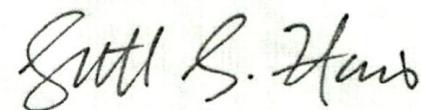
Re: Olga Tarasenko
v. University of Arkansas, et al.
No. 15-992

Dear Mr. Tschiemer:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

No. _____

In The
Supreme Court of the United States

◆◆◆

OLGA TARASENKO,

Petitioner,

v.

UNIVERSITY OF ARKANSAS, *et al.*,

Respondents.

◆◆◆

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

◆◆◆

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE EIGHTH CIRCUIT COURT OF APPEALS EMPLOY A DIFFERENT STANDARD OF PLEADING THAN MANDATED BY FED. R. CIV. P. 8(a) AND 12(b)(6) WHEN IT DENIED PETITIONER'S MOTION TO AMEND AND DISMISSED HER COMPLAINT WITH PREJUDICE?

PARTIES TO THE PROCEEDING

The parties to the proceeding are Olga Tarasenko, Petitioner, who is an individual resident of the State of Arkansas; and the University of Arkansas, Respondent, which is an agency of the State of Arkansas; and individual Arkansas residents, Respondents University of Arkansas Board of Trustees; Jim Von Gremp, Ben Hyneman, Jane Rogers, Stephen Broughton, David H. Pryor, Malk Waldrip, John Goodson, Reynie Rutledge, C.C. Gibson, III, and Morril Harriman, each in their official capacities as Members of the University of Arkansas Board of Trustees; Donald L. Bobbitt, Individually and in his official capacity as the President of the University of Arkansas; Joel Anderson, Individually and in his official capacity as Chancellor of University of Arkansas at Little Rock; Sandra Robertson, Individually and in her official capacity as Interim Provost of University of Arkansas at Little Rock; Christina Drale, Individually and in her official capacity as Associate Vice Chancellor for Academic Affairs of University of Arkansas at Little Rock; Patrick Pellicane, Individually and in his official capacity as Dean of the Graduate School of University of Arkansas at Little Rock; Johanna Miller Lewis, Individually and in her official capacity as Associate Dean of the Graduate School of University of Arkansas at Little Rock; Michael Gealt, Individually and in his official capacity as Dean of the College of Science and Mathematics of University of Arkansas at Little Rock;

PARTIES TO THE PROCEEDING – Continued

John Bush, Individually and in his official capacity as Chair of the Biology Department of University of Arkansas at Little Rock; Haydar Al-Shukri, Individually and in his official capacity as Chair of the Applied Science Department of University of Arkansas at Little Rock and Associate Dean on Research of the College of Science and Mathematics of University of Arkansas at Little Rock; and Mindy Wirges, Individually and in her official capacity as Employee Relations Manager of Human Resources of University of Arkansas at Little Rock.

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PETITION FOR A WRIT OF CERTIORARI

Olga Tarasenko respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eighth Circuit which Petitioner seeks review is *Tarasenko v. University of Arkansas, et al.*, 616 Fed. Appx. 214, 2015 U.S. App. LEXIS 17240 (8th Cir. Ark. Oct. 1, 2015), App. 1, *reh'g denied*, 2015 U.S. App. LEXIS 19293 (8th Cir. Ark. Nov. 4, 2015), App. 33, after it adopted reasoning contained in the United States District Court, Eastern District of Arkansas, 2014 U.S. Dist. LEXIS 175498 (E.D. Ark. Dec. 19, 2014), App. 3, and in 63 F. Supp. 3d 910 (E.D. Ark. Oct. 23, 2014), App. 8. This appeal arises from the Eighth Circuit Court of Appeals' final order denying rehearing, 2015 U.S. App. LEXIS 19293 (8th Cir. Ark. Nov. 4, 2015), App. 33, from which comes this appeal.

The Circuit Court's final order brings the Petitioner before this Court because the Eighth Circuit Court of Appeals' ruling, 616 Fed. Appx. 214, 2015 U.S. App. LEXIS 17240 (8th Cir. Ark. Oct. 1, 2015), App. 1, has affirmed the district court ruling, 2014 U.S. Dist. LEXIS 175498 (E.D. Ark. Dec. 19, 2014), App. 3, which denied Petitioner's motion to amend and its dismissal of Petitioner's complaint with prejudice, *id.*,

which Petitioner argued has misinterpreted and misapplied Fed. R. Civ. P. 8(a) and 12(b)(6). The underlying complaint alleged Petitioner was a tenured university professor and was denied substantive due process under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution, but the District Court, 2014 U.S. Dist. LEXIS 175498 (E.D. Ark. Dec. 19, 2014), App. 3, and Eighth Circuit found her allegations were insufficient to state a cause of action. 616 Fed. Appx. 214, 2015 U.S. App. LEXIS 17240 (8th Cir. Ark. Oct. 1, 2015), App. 1. The lower limits of due process are unclear absent clarification by this Court due to the misapplication of procedural rules in light of existing precedent in how a complaint's allegations should be interpreted. This present ruling impacts Petitioner and others within the federal appellate judicial system.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit, 616 Fed. Appx. 214, 2015 U.S. App. LEXIS 17240 (8th Cir. Ark. Oct. 1, 2015), App. 1, affirmed and denied a requested rehearing and rehearing *en banc*, 2015 U.S. App. LEXIS 19293 (8th Cir. Ark. Nov. 4, 2015), App. 33, on the specific issue of whether the district court misconstrued the requirements of Fed. R. Civ. P. 8(a) and 12(b)(6).

The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1254(1):

“§ 1254. Courts of appeals; certiorari; certified questions

“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

“(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. . . .”

28 U.S.C. § 2111:

“On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.”

U.S. Const. amend. XIV:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of

law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Fed. R. Civ. P. 8(a)(1), (2), (3):

“Rule 8. General Rules of Pleading

“(a) Claim for Relief. A pleading that states a claim for relief must contain:

“(1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

“(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

“(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.”

Fed. R. Civ. P. 12(b)(6):

“(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

....

“(6) failure to state a claim upon which relief can be granted;”



STATEMENT OF THE CASE

Petitioner Olga Tarasenko was a tenured Biology professor at the University of Arkansas at its Little Rock campus, where she taught from 2005 through 2012, when she was terminated for cause based upon an alleged inappropriate comment between Dr. Tarasenko and a student for whom the Petitioner was a faculty advisor. District Court opinion, 2014 U.S. Dist. Lexis 175498 (E.D. Ark. Dec. 19, 2014), App. 3, incorporating its earlier opinion, 63 F. Supp. 3d 910 (E.D. Ark. Oct. 23, 2014), *id.* at 912, App. 8. There was an investigation and a termination, and upon appeal, there was a hearing before the Faculty Appeal Committee, which, after taking seven days of testimony, concluded the charges were without merit and that Petitioner was denied due process. *Id.* at 915, App. 8. The university president disagreed with the Committee and upheld the termination. *Id.* at 915, App. 8. Petitioner sued the president, board of trustees, and individuals involved in the investigation for alleged improprieties and bias to such an extent that her due process rights of 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution were denied. *Id.* at 912, App. 8. Petitioner alleged that the individual defendants each “acted knowingly, intentionally, and maliciously, without due process of law, and in violation of UA policy and Plaintiff’s Constitutional rights by depriving Plaintiff of her protected property interest.” Original and proposed amended complaints. App. 20-22, App. 150-51 (contained in the Eighth Circuit principal brief’s appendix).

The United States District Court ruled that the complaint was insufficient but granted Petitioner leave to amend her complaint. *Tarasenko v. University of Arkansas, et al.*, 63 F. Supp. 3d 910 (E.D. Ark. Oct. 23, 2014), App. 8. Petitioner filed a motion for leave to amend, adding additional factual allegations but stated the termination investigation was biased that the individuals acted with the above-referenced malicious animus, and that the university president did not review the findings and evidence from the Committee, although he specifically stated he did so. *Id.* at 917. Petitioner alleged in her proposed amended complaint that the termination was without any basis in fact and that it was based upon trivial reasons or those unrelated to the educational process. App. 149 (contained in the Eighth Circuit principal brief's appendix).

After the Petitioner sought leave to amend, the District Court denied leave to amend and dismissed her complaint with prejudice on the basis of Fed. R. Civ. P. 12(b)(6). *Tarasenko v. University of Arkansas, et al.*, 2014 U.S. Dist. LEXIS 175498 (E.D. Ark. Dec. 19, 2014), App. 3.

The Petitioner appealed and the Eighth Circuit Court of Appeals affirmed and adopted the opinion of the District Court. *Tarasenko v. University of Arkansas, et al.*, 616 Fed. Appx. 214, 2015 U.S. App. LEXIS 17240 (8th Cir. Ark. Oct. 1, 2015), App. 1. The Petitioner sought a rehearing and rehearing *en banc*, which were denied. *Tarasenko v. University of Arkansas, et*

al., 2015 U.S. App. LEXIS 19293 (8th Cir. Ark. Nov. 4, 2015), App. 33.

Petitioner seeks review under 28 U.S.C. § 1257(a), on the grounds in Supreme Court Rule 10(b) and (c), since the Eighth Circuit Court of Appeals' decision violates federal procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution and conflicts with holdings of this Court.

REASONS FOR GRANTING THE PETITION

I. THIS COURT HAS RECOGNIZED THAT A TENURED PROFESSOR HAS A PROPERTY INTEREST, WHICH IS GUARANTEED PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

As a preliminary matter, the Court has held that a tenured professor has a property right under the Fourteenth Amendment, *Vail v. Board of Education*, 706 F.2d 1435, 1438 (7th Cir. 1983), *aff'd*, 466 U.S. 377, 104 S. Ct. 2144, 80 L.Ed.2d 377 (1984), and *Beilan v. Board of Public Education*, 357 U.S. 399, 78 S. Ct. 1317, 2 L.Ed.2d 1414 (1958). The right to teach, as any other right to exercise any livelihood that is contingent upon establishing a license, is highly protected and should not be lightly taken away without constitutionally permissible due process.

In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 543, 105 S. Ct. 1487, 1494, 84 L.Ed.2d

494, 504 (1985), this Court wrote, “We have frequently recognized the severity of depriving a person of the means of livelihood.”

Minimal procedural due process has likewise been recognized as necessarily providing an opportunity to be heard prior to deprivation of property interests. *See generally In Re Ruffalo*, 390 U.S. 544, 550, 88 S. Ct. 1222, 1225-26, 20 L.Ed.2d 117, 122 (1968) (recognizing an attorney has a right to procedural due process in a disciplinary proceeding). *See also Boddie v. Connecticut*, 401 U.S. 371, 378-79, 91 S. Ct. 780, 786-87, 28 L.Ed.2d 113, 119 (1971) (“[A] state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.”); *see generally Ex Parte Bradley*, 74 U.S. 364, 375, 19 L.Ed. 214, 218, 7 Wall. 364 (1868) (attorney); *Selling v. Radford*, 243 U.S. 46, 48, 37 S. Ct. 377, 377-78, 61 L.Ed. 585, 586 (1917) (attorney); *Barry v. Barchi*, 443 U.S. 55, 64, 99 S. Ct. 2642, 2649, 61 L.Ed.2d 364, 374 (1979) (racehorse trainer’s license).

“A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment,” noted the Court in *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-39, 77 S. Ct. 752, 756, 1 L.Ed.2d 796, 801 (1975).

Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L.Ed.2d 18, 33 (1976), observed that the

Court will examine three factors to determine if a property interest requires due process, namely:

“First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”

This Court has extended the right to a procedurally significant hearing in a variety of factual situations. *E.g., Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 1589, 29 L.Ed.2d 90, 94 (1971) (involving suspension of a driver’s license).

A tenured professor is entitled, both, to a fair and constitutionally sufficient investigation and decision-making process involving a termination of employment. *Vail v. Board of Education*, *supra*. Those state actors must not exercise a fruitless investigatory proceeding, which merely gives lip service to constitutional requirements. As noted in *Withrow v. Larkin*, 421 U.S. 35, 50, 95 S. Ct. 1456, 1466, 43 L.Ed.2d 712, 725 (1975), an action must be examined for fundamental fairness, because in a variety of cases, courts have found investigatory or adjudicatory proceedings were tainted, noting:

"Those cases in which due process violations have been found are characterized by factors not present in the record before us in this litigation and we need not pass upon their validity. In *American Cyanimid Co. v. FTC*, 363 F.2d 757 (CA6 1966), one of the commissioners had previously served actively as counsel for a Senate's subcommittee investigating many of the same facts and issues before the Federal Trade Commission for consideration. In *Texaco, Inc. v. FTC*, 118 U.S. App. D.C. 366, 336 F.2d 754 (1964), *vacated on other grounds*, 381 U.S. 739 (1965), the court found that a speech made by a commissioner clearly indicated that he had already to some extent reached a decision as to matters pending before that Commission. See also *Cinderella Career & Finishing Schools, Inc. v. FTC*, 138 U.S. App. D.C. 152, 158-161, 425 F.2d 583, 589-592 (1970). *Amos Treat & Co. v. SEC*, 113 U.S. App. D.C. 100, 306 F.2d 260 (1962), presented a situation in which one of the members of the Securities and Exchange Commission had previously participated as an employee in the investigation of charges pending before the Commission. In *Trans World Airlines v. CAB*, 102 U.S. App. D.C. 391, 254 F.2d 90 (1958), a Civil Aeronautics Board member had signed a brief in behalf of one of the parties in the proceedings prior to assuming membership on the board. See also *King v. Caesar Rodney School District*, 380 F. Supp. 1112 (Del. 1974)."

Fundamental fairness is necessary in any hearing. *Withrow v. Larkin*, *supra* (noting by citing cases that pre-formed opinions or bias is contrary to due process), as has been recognized in many cases. *E.g.*, *Llano v. Berglund*, 282 F.3d 1031, 1035-36 (8th Cir. 2002) (citing *Brady v. Gebbie*, 859 F.2d 1543 (9th Cir. 1988), and noting that if decision-makers have already made up their minds, a due process violation occurs); *Klinge v. Lutheran Charities Association*, 523 F.2d 56, 60 (8th Cir. 1956) (entitlement to fairness in hearing, “before a panel of fair minded doctors”). *See also Shape v. Barnes County, North Dakota*, 396 F. Supp. 2d 1067, 1082 (D. N.D. 2005) (noting issues of impartial grievance committee).

The complaint and putative amended complaints stated causes of action since they challenged the investigations and decisions as contrary to fundamental fairness under the due process clause of the United States Constitution.

II. THIS CASE RAISES A SIGNIFICANT ISSUE: WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS HAS MISCONSTRUED FED. R. CIV. P. 8(a) AND 12(b)(6) IN DENYING PETITIONER’S MOTION TO AMEND AND IN DISMISSING HER COMPLAINT WITH PREJUDICE.

The reason that this Court should grant certiorari in this case is that it brings before the Court the question of whether a district court and circuit court of appeals have unduly scrutinized the complaint’s

allegations in this case, in contravention of this Court's rules, Fed. R. Civ. P. 8(a) and 12(b)(6), to deny hearing her claims of constitutional due process under 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution, when the complaint as filed and the motion to amend and putative amended complaint alleged intentional acts by the university and individual state actors that refused an impartial review of the asserted justifiable termination from employment as a tenured professor in the state university system. Application of Fed. R. Civ. P. 8(a) and 12(b)(6) to this case and others is an issue which the courts continue to struggle with even after the Court's ruling in a litany of cases, including *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S. Ct. 1937, 173 L.Ed.2d 868 (2009), and progeny.

In *Johnson v. City of Shelby*, 135 S. Ct. 346, 347, 190 L.Ed.2d 309, 310, 2014 U.S. LEXIS 7437, at *3 (2014), the Court, in granting certiorari and reversing, concluded there are no heightened pleading requirements in a section 1983 complaint.

The complaint must satisfy pleading a “short and plain statement of the claim showing that the pleader is entitled to relief,” under Fed. R. Civ. P. 8(a)(2). Pleading requirements are not unnecessarily stringent. *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S. Ct. 1937, 1940, 173 L.Ed.2d 868, 874 (2009) observed, “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

A complaint's allegations, treated as true, should only be insufficient under a motion filed under Fed. R. Civ. P. 12(b)(6) when on their face, there is no possibility of relief. “[D]etailed factual findings are not required.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L.Ed.2d 929, 940 (2007). The District Courts and Courts of Appeals should not engage in speculation to whether one may prevail, even if they deem a complaint's allegations “improbable.” The question is *not* whether the plaintiff will in all likelihood ultimately succeed, as noted in many decisions, *Bell Atlantic Corp. v. Twombly, supra*; *Jackson v. Birmingham Board of Education*, 544 U.S. 167, 184, 125 S. Ct. 1497, 1510, 161 L.Ed.2d 361, 377 (2005) (noting the question in a 12(b)(6) motion is whether one is entitled to present evidence). *Denton v. Hernandez*, 504 U.S. 25, 33, 112 S. Ct. 1728, 1733, 118 L.Ed.2d 340, 350 (1992), “Some improbable allegations might properly be disposed of on summary judgment, but to dismiss them as frivolous without factual development is to disregard the age-old insight that many allegations might be ‘strange, but true; for truth is always strange, Stranger than fiction.’” *Id.* (citation omitted).

A federal court should grant a leave to amend a complaint freely as justice requires under Fed. R. Civ. P. 15(a)(2). *E.g., Johnson v. City of Shelby*, 135 S. Ct. 346, 190 L.Ed.2d 309, 2014 U.S. LEXIS 7437 (2014). If a complaint's amendment would be futile, the federal courts may deny a motion to amend,

considering the pleading requirements cited above, but that cannot be said to be the case here.

Pleading a claim under the federal procedural rules requires only that one plead a claim, whether or not it may ultimately result in a favorable verdict. The complaint in this case specifically pleaded that the termination investigation was biased, that the individuals acted with the above-referenced malicious animus, and that the university president did not review the findings and evidence from the Committee, although he specifically stated he did so. Opinion and Order, 63 F. Supp. 3d at 917, App. 18. The complaints alleged the decision was influenced because the University received substantial tuition from Iraq. The complaints alluded to ulterior motives and improper financial considerations of financial payments from the Iraqi government. Complaint, App. 19-20, Amended Complaint, App. 146 (contained in the appendix of the Eighth Circuit Brief).

Petitioner alleged the termination was without any basis in fact and that it was based upon trivial reasons or those unrelated to the educational process. Amended Complaint, App. 148 (which is contained in the Appendix of the Eighth Circuit brief). In construing the allegations in this case, the District Court and Eighth Circuit (which adopted its reasoning) concluded no claim was stated under Fed. R. Civ. P. 12(b)(6). This was error.

One may not deprive a teacher of their occupation arbitrarily and capriciously as they are entitled

to constitutionally mandated due process by the Fourteenth Amendment. *Beilan v. Board of Public Educ.*, 357 U.S. 399, 405, 78 S. Ct. 1317, 1322, 2 L.Ed.2d 1414, 1419 (1958); *Adler v. Board of Educ.*, 342 U.S. 485, 493, 72 S. Ct. 380, 385, 96 L.Ed. 517, 524-25 (1952). There must be a fair process. *Withrow v. Larkin*, 421 U.S. 35, 95 S. Ct. 1456, 43 L.Ed.2d 712 (1975), explained the necessity of fairness and an even-hand, which Petitioner's complaint alleged was absent in this case. As noted in *Withrow, supra*:

"Those cases in which due process violations have been found are characterized by factors not present in the record before us in this litigation and we need not pass upon their validity. In *American Cyanimid Co. v. FTC*, 363 F.2d 757 (CA6 1966), one of the commissioners had previously served actively as counsel for a Senate's subcommittee investigating many of the same facts and issues before the Federal Trade Commission for consideration. In *Texaco, Inc. v. FTC*, 118 U.S. App. D.C. 366, 336 F.2d 754 (1964), *vacated on other grounds*, 381 U.S. 739 (1965), the court found that a speech made by a commissioner clearly indicated that he had already to some extent reached a decision as to matters pending before that Commission. See also *Cinderella Career & Finishing Schools, Inc. v. FTC*, 138 U.S. App. D.C. 152, 158-161, 425 F.2d 583, 589-592 (1970). *Amos Treat & Co. v. SEC*, 113 U.S. App. D.C. 100, 306 F.2d 260 (1962), presented a situation in which one of the members of

the Securities and Exchange Commission had previously participated as an employee in the investigation of charges pending before the Commission. In *Trans World Airlines v. CAB*, 102 U.S. App. D.C. 391, 254 F.2d 90 (1958), a Civil Aeronautics Board member had signed a brief in behalf of one of the parties in the proceedings prior to assuming membership on the board. See also *King v. Caesar Rodney School District*, 380 F. Supp. 1112 (Del. 1974)."

421 U.S. at 50, 95 S. Ct. at 1466, 43 L.Ed.2d at 725.

In construing allegations in a complaint, they must be treated as true and not without some heightened degree of scrutiny. *E.g., Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, 127 S. Ct. 1955, 1960, 167 L.Ed.2d 929, 935-36 (2007); *Jackson v. Birmingham Board of Education*, 544 U.S. 167, 184, 125 S. Ct. 1497, 1510, 161 L.Ed.2d 361, 377 (2005) (noting the question in a 12(b)(6) motion is whether one is entitled to present evidence). The courts may not disbelieve allegations. *Neitzke v. Williams*, 490 U.S. 319, 327, 104 L.Ed.2d 338, 348, 109 S. Ct. 1827, 1832 (1980) (noting that Rule 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations).

In *Johnson v. City of Shelby*, 135 S. Ct. 346, 347, 190 L.Ed.2d 309, 310, 2014 U.S. LEXIS 7437, at *3 (2014), the Court wrote:

"Federal pleading rules call for 'a short and plain statement of the claim showing

that the pleader is entitled to relief,' Fed. Rule Civ. Proc. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted. See Advisory Committee Report of October 1955, reprinted in 12A C. Wright, A. Miller, M. Kane, R. Marcus, and A. Steinman, *Federal Practice and Procedure*, p. 644 (2014 ed.) (*Federal Rules of Civil Procedure* 'are designed to discourage battles over mere form of statement'); 5 C. Wright & A. Miller, § 1215, p. 172 (3d ed. 2002) (Rule 8(a)(2) 'indicates that a basic objective of the rules is to avoid civil cases turning on technicalities'). *In particular, no heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke §1983 expressly in order to state a claim.* See *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164, 113 S. Ct. 1160, 122 L.Ed.2d 517 (1993) (a federal court may not apply a standard 'more stringent than the usual pleading requirements of Rule 8(a)' in 'civil rights cases alleging municipal liability'); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512, 122 S. Ct. 992, 152 L.Ed.2d 1 (2002) (imposing a 'heightened pleading standard in employment discrimination cases conflicts with Federal Rule of Civil Procedure 8(a)(2)')."

Id. (emphasis supplied).

The District Court and Eighth Circuit used a more stringent standard of review of the complaint's

allegations than has been provided in the federal rules. This Court should grant certiorari to take the opportunity to clarify the proper standard in this teacher dismissal case.



CONCLUSION

It is for these reasons the Petitioner respectfully requests her Petition for a writ of certiorari be granted.

Respectfully submitted,

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App. 1

**United States Court of Appeals
for the Eighth Circuit**

No. 15-1159

Olga Tarasenko

Plaintiff-Appellant

v.

University of Arkansas, et al.

Defendants-Appellees

Appeal from United States District Court
for the Eastern District of Arkansas – Little Rock

Submitted: September 23, 2015

Filed: October 1, 2015
[Unpublished]

Before LOKEN, BOWMAN, and MURPHY, Circuit
Judges.

PER CURIAM.

Olga Tarasenko appeals the dismissal of her 42 U.S.C. § 1983 complaint alleging that her termination as a tenured biology professor at the University of

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Arkansas at Little Rock violated her federal constitutional rights to substantive and procedural due process, and the subsequent denial of her motion for leave to file an amended complaint. After careful de novo review of the record, *see Zutz v. Nelson*, 601 F.3d 842, 848-50 (8th Cir. 2010), we affirm for the reasons stated in the district court's¹ orders dismissing Ms. Tarasenko's due process claims and denying her motion for leave to amend. *See* 8th Cir. Rule 47B.

¹ The Honorable J. Leon Holmes, United States District Judge for the Eastern District of Arkansas.

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

OLGA TARASENKO PLAINTIFF
v. No. 4:14CV00417 JLH
UNIVERSITY OF ARKANSAS, et al. DEFENDANTS

ORDER

Olga Tarasenko was a tenured biology professor at the University of Arkansas at Little Rock. She was terminated for cause in the fall of 2012 allegedly for making discriminatory and threatening comments to a student. Tarasenko commenced this action alleging that the University and other defendants discriminated against her based on her sex and her national origin and violated her Fourteenth Amendment due process rights. She asserted claims for violations of due process, equal protection, and free speech rights, and she claimed that she was subjected to sex discrimination, national origin discrimination, and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* She also alleged several state law causes of action.

The Court granted the defendants' motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing Tarasenko's complaint without prejudice, while granting her the opportunity to seek leave to file an amended complaint. Tarasenko has filed a motion for leave to file an amended complaint and has attached her proposed amended complaint.

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The defendants have objected to the proposed amended complaint on the grounds that it does not remedy the defects in the original complaint and therefore granting the leave to amend would be futile. Tarasenko did not file a brief with her motion for leave to file an amended complaint, nor did she respond to the arguments made by the defendants in their objection to the motion for leave to amend.

The proposed amended complaint alleges only one federal cause of action, i.e., Count I, a claim under 42 U.S.C. § 1983 that the defendants denied Tarasenko the due process of law guaranteed by the Fourteenth Amendment. All of the other counts in the proposed amended complaint allege state-law causes of action: Count VII, violation of the Arkansas Civil Rights Act; Count VIII, breach of contract; Count IX, tortious interference with contract; and Count X, outrage.¹

The Court explained at length in its original Opinion and Order that Tarasenko's complaint failed to allege a plausible claim that her due process rights were violated. As the defendants point out, the proposed amended complaint is not in substance different from the original complaint. For the reasons previously stated in dismissing the original complaint

¹ The proposed amended complaint omits the following counts that were contained in the original complaint: Count II, equal protection; Count III, free speech; Count IV, Title VII sex discrimination; Count V, Title VII national origin discrimination; and Count VI, Title VII retaliation.

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under Rule 12(b)(6), the proposed amended complaint would not withstand a motion to dismiss under Rule 12(b)(6). Therefore, the motion for leave to amend will be denied as futile. *Zutz v. Nelson*, 601 F.3d 842, 850 (8th Cir. 2010). Tarasenko's federal claims are dismissed with prejudice.

Having disposed of Tarasenko's claims that are based on federal law, the remaining claims are state-law claims over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337. The Court may decline to exercise supplemental jurisdiction after dismissing all of the claims that arise under federal law. *Id.* § 1337(c)(3). “[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness, and comity – will point toward declining to exercise jurisdiction over the remaining state-law claims.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7, 108 S. Ct. 614, 619 n.7, 98 L. Ed. 2d 720 (1988). The Eighth Circuit has said: “We stress the need to exercise judicial restraint and avoid state law issues wherever possible. We also recognize within principles of federalism the necessity to provide, great deference and comity to state court forums to decide issues involving state law questions.” *Condor Corp. v. City of St. Paul*, 912 F.2d 215, 220 (8th Cir. 1990).

Tarasenko's claims, for the most part, are based on allegations that the officials at the University of Arkansas failed to follow the University's own

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procedures. These issues implicate state law and questions relating to the public policy of the State of Arkansas. They are, therefore, issues that are best addressed by the state courts. Out of deference and comity to the state courts, the Court declines to exercise supplemental jurisdiction over Tarasenko's state-law claims, *See Glorvigen v. Cirrus Design Corp.*, 581 F.3d 737, 749 (8th Cir. 2009).

CONCLUSION

For the reasons stated, Olga Tarasenko's federal-law claims are dismissed with prejudice because the Court declines to exercise supplemental jurisdiction over her state-law claims, those claims are dismissed without prejudice.

IT IS SO ORDERED this 19th day of December, 2014.

/s/ J. Leon Holmes
J. LEON HOLMES
UNITED STATES
DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

OLGA TARASENKO PLAINTIFF
v. No. 4:14CV00417 JLH
UNIVERSITY OF ARKANSAS, et al. DEFENDANTS

JUDGMENT

Pursuant to the Order entered separately today, Olga Tarasenko's claims arising under federal law are dismissed with prejudice. Her claims arising under state law are dismissed without prejudice.

IT IS SO ORDERED this 19th day of December,
2014.

/s/ J. Leon Holmes
J. LEON HOLMES
UNITED STATES
DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

OLGA TARASENKO PLAINTIFF
v. No. 4:14CV00417 JLH
UNIVERSITY OF ARKANSAS, et al. DEFENDANTS

OPINION AND ORDER

Olga Tarasenko was a tenured biology professor at the University of Arkansas at Little Rock.¹ She was terminated for cause in the fall of 2012 for allegedly making discriminatory and threatening comments to a student. Tarasenko alleges that the University and other defendants discriminated against her due to her sex and her national origin and violated her Fourteenth Amendment due process rights during the investigation and appeals process. Based on those allegations, she has asserted claims for violations of her due process, equal protection, and free speech rights. She also alleges that she was subjected to sex discrimination, national origin discrimination, and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Lastly, she alleges under state law that the defendants violated the Arkansas Civil Rights Act (Ark. Code Ann. § 16-123-105)², breached her contract, tortiously

¹ UALR is a campus of the University of Arkansas System.

² The Arkansas courts look to federal courts for guidance when interpreting the Arkansas Civil Rights Act. *Island v. Buena* (Continued on following page)

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interfered with her contract, and committed the tort of outrage.

The defendants have moved to dismiss the complaint for failure to state a claim upon which relief may be granted. Tarasenko has responded, and the defendants have replied. For the following reasons, the motion to dismiss is granted.

I.

Tarasenko began as a tenure track assistant professor in the UALR biology department on July 1, 2005.³ ¶ 34. She was granted tenure on April 13, 2011, and was promoted to associate professor effective July 1, 2011. ¶¶ 35 and 36.

In the spring of 2009, a graduate student named Souzan Eassa selected Tarasenko as her major Ph.D. advisor. ¶ 38. On February 14, 2012, Eassa submitted her proposal to her dissertation committee, which did not approve of it. ¶¶ 41 and 42. Eassa blamed Tarasenko for the lack of approval and confronted her on February 15, 2012, as she was entering a class

Vista Resort, 352 Ark. 548, 556, 103 S.W.3d 671, 675 (2003). Consequently, Tarasenko's Arkansas Civil Rights Act claims stand or fall with her federal civil rights claims and will not be analyzed separately. *Gladden v. Richbourg*, 759 F.3d 960, 969 (8th Cir. 2014).

³ This statement of facts is taken from Tarasenko's complaint. All factual citations are to the paragraph numbers in the complaint, Document # 1.

that she was about to teach. ¶¶ 43 and 44. Eassa claims that Tarasenko said, in front of the class, that Eassa was Iraqi and would kill a particular student. ¶ 46. On February 16, 2012, according to Eassa, Tarasenko said that she would kill Eassa and “made a gun gesture with her hand and pointed it at Plaintiff [sic].” ¶¶ 48 and 49. According to Tarasenko, no reports were made regarding these two incidents for two months. ¶¶ 47 and 50.

On May 8, 2012, Tarasenko suggested that Eassa apply for an “Incomplete” grade because otherwise Eassa would receive no credit. ¶ 51. The following day, Tarasenko filed an Academic Integrity Report on Eassa notifying the University that Eassa had committed academic fraud. ¶ 52. Sometime after this, Haydar Al-Shukri, who was chairman of the UALR Applied Science department, solicited written statements from students setting forth allegations against Tarasenko, including those pertaining to the events of February 15 and 16. *Id.* ¶ 54. On May 11, 2012, University administrators, including Patrick Pellicane (Dean of the graduate school), Al-Shukri, Michael Gealt (Dean of the College of Science and Mathematics), and Johanna Miller Lewis (Associate Dean of the graduate school) held a meeting with Eassa and several other students. ¶ 53. The same administrators, along with John Bush (Chairman of the Biology Department) and Tom Lynch⁴ held a meeting on May

⁴ Lynch is not named as a defendant in the complaint, nor is his position identified.

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15, 2012 which resulted in Pellicane and Gealt visiting the University legal counsel, Mary Abernathy, after which Pellicane wrote a letter to Tarasenko outlining the allegations against her but not naming her accusers. ¶¶ 57 and 58.

On May 29, 2012, Interim Provost Sandra Robertson, Associate Vice Chancellor Christina Drale, Pellicane, Gealt, Lewis, and Al-Shukri held a meeting with Tarasenko to discuss the allegations. ¶ 65. Prior to this meeting, Lewis announced that she was assuming the role of Eassa's faculty advocate. ¶ 69. Tarasenko alleges that investigating student allegations against a professor is outside the scope of Drale and Lewis' job responsibilities. ¶¶ 67 and 68. At the May 29 meeting, Tarasenko informed the administrators that Bush made the following statements to her between 2006 and 2012: "No grants-gulag," "No Happy Students-gulag," and "No publications-gulag." ¶¶ 75 and 76. A gulag is a concentration camp where the former Soviet Union imprisoned people and Tarasenko's country of origin is a former member of the Soviet Union.⁵ ¶¶ 77 and 78.

Pellicane initiated various meetings with students and administrators even though no University policy provided for him to do so. ¶¶ 83-86. Gealt admitted he thought Al-Shukri was biased, but Al-Shukri continued his involvement with the investigation.

⁵ The complaint never states which of the former members of the Soviet Union is Tarasenko's country of origin.

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¶ 88-89. On June 6, 2012, Gealt and Pellicane authored a letter to Robertson stating there was sufficient evidence to pursue further investigation of the allegations against Tarasenko. ¶¶ 90 and 94. Al-Shukri, Drale, and Abernathy also were involved in drafting this letter. ¶¶ 90-93.

A meeting was held with Tarasenko, Eassa, Drale, and Mindy Wirges (from the human resources department) regarding Eassa's grade appeal even though no policy exists allowing or requiring personnel from the human resources department to be present at such a meeting. ¶¶ 97-103. Although Drale provided Wirges with the documents that Eassa had provided supporting her appeal, she did not provide Wirges with any documentation that Tarasenko had provided. ¶¶ 98-99.

On July 23, 2012, Bush informed Tarasenko that the allegations against her were being investigated and that her fall duty assignments were being changed pending the outcome. ¶ 106. Two days later, on behalf of Eassa, Lewis filed a charge of discriminatory harassment against Tarasenko due to the February 14 and 15 incidents. ¶ 107. Wirges then initiated a human resources investigation into these incidents and interviewed Eassa and the other students making the accusations. ¶¶ 108 and 110. She also met with Tarasenko on August 17, 2012. ¶ 111. The students' identities were not divulged during that meeting. ¶¶ 111-13. On August 25, 2012, Tarasenko provided information controverting the allegations, including statements from other students present when the

incidents took place. ¶ 115. A meeting took place on August 30, 2012 between Anderson, Gealt, Robertson, Drale, Wirges, Pellicane and Bush to discuss Tarasenko's employment. ¶ 133. This meeting was not authorized or required by any University policy relating to investigations. ¶¶ 134-35.

During her investigation, Wirges did not interview the students who provided information opposite to that provided by Tarasenko's accusers. ¶ 116. When Wirges concluded the investigation on August 27, she reported that her investigation substantiated the allegations. ¶¶ 117-18. Wirges attempted to conduct her investigation in accordance with the staff handbook, even though Tarasenko is governed by the faculty handbook, not the staff handbook; and even then Wirges did not comply with the staff handbook. ¶¶ 119-22. The University policies require: a copy of the discrimination charge must be provided to the accused; a discrimination charge should be filed within thirty days of the incident or a written waiver request be obtained and notification of approval must be maintained in the file; an initial hearing with certain parties; and the accused must be given seven days to respond to the discrimination charge; but none of these procedures was followed. ¶¶ 123-28.

Tarasenko also alleges that Wirges violated University policy by failing to inform Tarasenko of additional time needed to complete the investigation, failing to inform her of the status of the investigation, failing to inform her of the revised deadline for the completion of the investigation, failing to inform her

and her supervisor of the investigative findings, failing to discuss alternative conflict resolution, and failing to provide Tarasenko with an opportunity to provide a rebuttal statement for the file and investigation report. ¶¶ 129-32.

On September 18, 2012, Gealt informed Tarasenko he would recommend her termination the next day. ¶ 136. Tarasenko still had not been provided with her accusers' identities. ¶ 137-38. On September 19, 2012, Gealt sent a memorandum to Robertson and UALR Chancellor Joel Anderson, recommending that Tarasenko be terminated and that she be suspended immediately. ¶¶ 139-40. Robertson and Anderson approved the termination recommendation. ¶ 141. Anderson also determined that an emergency existed that required immediate suspension. ¶ 143. These determinations were discussed with the President of the University, Donald L. Bobbitt, and, ultimately, Bobbitt made the final decision to terminate Tarasenko. ¶ 141-44.

When Tarasenko requested that an informal faculty hearing committee review her case, her request was declined; but she requested a formal faculty appeal hearing review it, and that request was approved. ¶¶ 145-47. The faculty appeal committee conducted a hearing between April 15 and May 2, 2013, receiving seven days of testimony, hundreds of pages of documents as evidence, and closing briefs. ¶ 148 and ¶ 150. By a vote of four to one, the committee found that the University had failed to provide sufficient evidence to dismiss Tarasenko's tenure for

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cause and that it had violated Tarasenko's due process rights in several instances. ¶¶ 152-53.

Bobbitt rejected the committee's findings and terminated Tarasenko. ¶ 156. The dismissal letter stated:

I have reviewed the recommendations of Chancellor Anderson, Dean Gealt and the Grievance Panel concerning your dismissal

...

* * *

As part of my review, I considered the entire record submitted to me (including the testimony, written records, the exhibits) and I agree with Chancellor Anderson and Dean Gealt that "cause", as defined by Board Policy 405.1, exists to support your dismissal for cause. Based upon my professional judgment and my independent review of the record, I find that your conduct toward students and your dishonesty when questioned by University Officers indicates an unwillingness to perform your duties and fulfill your responsibilities to the University.

Document # 1 at 67. Tarasenko appealed this decision to the Board of Trustees, which upheld it. ¶¶ 158-59. She then filed a timely EEOC charge and received a Dismissal and Notice of Rights. ¶ 160.

II.

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Although detailed factual allegations are not required, the complaint must set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). The court must accept as true all of the factual allegations contained in the complaint, *Twombly*, 550 U.S. at 572, 127 S. Ct. at 1975, and must draw all reasonable inferences in favor of the nonmoving party. *Cole v. Homier Distrib. Co., Inc.*, 599 F.3d 856, 861 (8th Cir. 2010). The complaint must contain more than labels, conclusions, or a formulaic recitation of the elements of a cause of action, which means that the court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1965.

III.

A. Substantive Due Process⁶

The Eighth Circuit has held that a tenured professor at a state university has “a substantive due process right to be free from discharge for reasons that are ‘arbitrary and capricious,’ or in other words, for reasons that are trivial, unrelated to the education process, or wholly unsupported by a basis in fact.” *Morris v. Clifford*, 903 F.2d 574, 577 (8th Cir. 1990). *See also Herts v. Smith*, 345 F.3d 581, 587 (8th Cir. 2003); *O’Neal v. Batesville Sch. Dist. No. 1*, E.D. Ark. No. 4:11CV00221-KGB, 2013 WL 593515, at *3 (E.D. Ark. February 15, 2013). “This is a high standard, as ‘[s]ubstantive due process is concerned with violations of personal rights . . . so severe . . . so disproportionate to the need presented, and . . . so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to brutal and inhumane abuse of official power literally

⁶ The University moved to dismiss Tarasenko’s section 1983 monetary damage claims against it and its officials in their official capacities based on Eleventh Amendment immunity. In response, Tarasenko has stated that she is asserting no such claims, so the Court will not address the issue. The University also argues that the official capacity claims for injunctive relief against the administrators other than Bobbitt must be dismissed because Bobbitt is the only person who can reinstate her and because the complaint does not identify a policy or custom that would permit relief under *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). Because the complaint fails to plead a claim upon which relief may be granted under section 1983, the Court need not reach those issues.

shocking to the conscience.’’ *Christiansen v. West Branch Community Sch. Dist.*, 674 F.3d 927, 937 (8th Cir. 2012) (quoting *C.N. v. Willmar Pub. Schs., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 634 (8th Cir. 2010)). ‘‘The Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions.’’ *Id.* at 938 (quoting *Bishop v. Wood*, 426 U.S. 341, 350, 96 S. Ct. 2074, 48 L. Ed. 2d 984 (1976)).

In Tarasenko’s response brief, she states that examples of truly irrational and sufficiently outrageous conduct include:

Defendant Bobbitt’s one paragraph termination in opposition to the lengthy opinion of the Faculty Appeal Hearing Committee which took 7 full days of testimony from witnesses in this matter and reviewed hundreds of pages of evidence. Defendant Bobbitt did not attend any of this hearing, review transcripts of that hearing, or review any of the evidence or briefs submitted at that hearing . . . Wirges’s abject failures throughout her ‘investigation’ of this matter including the complete lack of knowledge related to the different handbooks . . . the inappropriate influence exerted on the entire process by Defendant Lewis . . . [c]omplete failures to comply with the investigation process by various Defendants are listed throughout the Complaint.

Document #17 at 7. But these are procedural complaints and allegations of negligence, not examples of

conduct that would violate Tarasenko's right to substantive due process.

Bobbitt terminated Tarasenko based on the allegations that Tarasenko had made discriminatory and threatening remarks to a student – that is the conduct on which Tarasenko's substantive due process claim must be based. Tarasenko does not allege that Bobbitt's decision to terminate her employment was inspired by malice or sadism, nor does she allege that the reasons given for her termination are trivial, unrelated to the educational process, or wholly unsupported by a basis in fact. Tarasenko alleges in her complaint that Eassa reported that she made an "ethnically charged comment" in class, "saying to another student that Eassa was Iraqi and would kill the other student," and that Tarasenko threatened to kill Eassa. ¶¶ 47 and 49. The comments that Eassa reported are grounds for termination of Tarasenko's employment, and her report of them is some factual basis for them. Tarasenko's substantive due process rights were not violated. *Cf. Christiansen*, 674 F.3d at 938 (complaint alleging that a school bus driver was terminated based on false accusations that the school knew or should have known were false failed to state a substantive due process claim); *Herts*, 745 F.3d at 588 (non-renewal of a teacher contract when the teacher testified in a civil rights case against the school district did not violate the teacher's substantive due process rights).

B. Procedural Due Process

To establish a violation of due process, the plaintiff must prove that she was deprived of some life, liberty, or property interest without due process. *De Llano v. Berglund*, 282 F.3d 1031, 1034 (8th Cir. 2002). While Tarasenko's status as a tenured professor gave her a property interest in continued employment, the allegations in her complaint do not show that her due process rights were violated. "A public employee with a protected property interest in continued employment receives sufficient due process if he receives notice, an opportunity to respond to the charges before his termination, and post-termination administrative review." *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 627 (8th Cir. 2001). "A pre-deprivation hearing need only provide the employee with 'oral or written notice of the charges against him [or her], an explanation of the employer's evidence, and an opportunity to present his [or her] side of the story.'" *Floyd-Gimon v. Univ. of Ark. For Med. Sciences ex rel. Bd. of Trustees of Univ. of Ark.*, 716 F.3d 1141, 1146 (8th Cir. 2013) (quoting *Cleveland Bd. Of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S.Ct. 1487, 1495, 84 L.Ed.2d 494 (1985)). "[T]he pre-termination 'hearing,' though necessary, need not be elaborate." *Loudermill*, 470 U.S. at 545, 105 S.Ct. at 1495.

Tarasenko first received notice of the allegations against her in a meeting without her accusers named on May 15, 2012. ¶¶ 55-57. Sometime after this meeting, a letter outlining the allegations was provided

to her. ¶ 57. University administrators met with Tarasenko on May 29, 2012, to discuss the allegations. ¶¶ 65 and 82. On August 17, 2012, Tarasenko met with Wirges regarding the ongoing investigations and still was not informed of her accusers' identities. ¶ 111. Tarasenko submitted information to Wirges on August 25, 2012 controverting the allegations. ¶ 115. Taking all the facts alleged in the complaint as true, as late as September 18, 2012, Tarasenko had not been informed of her accusers' identities. ¶ 136. However, by her own admission Tarasenko knew enough to submit information controverting the allegations on August 25, 2012. ¶ 115. She had notice of the charges against her and an explanation of the evidence.

Tarasenko was also given the opportunity to respond. As noted, a meeting took place on May 29, 2012, during which administrators discussed the allegations with Tarasenko. ¶ 65. Tarasenko submitted information in opposition to the allegations on August 25, 2012. ¶ 115. Thus, she had an opportunity to respond to the allegations, and she took advantage of that opportunity to do so.

In addition, a faculty appeal committee held hearings between April 14 and May 2, 2013. ¶ 148. Tarasenko was represented by counsel and participated in the hearings. Document #1 at 30. Tarasenko also submitted a closing brief. ¶ 150. Nowhere does her complaint allege that the identities of her accusers were withheld from her until the hearing or a date so close to the hearing that she could not prepare.

Although the faculty appeal committee concluded that there was not enough evidence to support her termination, Bobbitt disagreed and terminated Tarasenko for cause. ¶¶ 152-53 and 156. A post-termination administrative review occurred when Tarasenko appealed this decision to the Board of Trustees. ¶¶ 158-59. Tarasenko was invited to attend and was allowed to have representation at the Board meeting. Document #1 at 67-68. Thus, Tarasenko received both a pre-deprivation hearing and a post-termination administrative review, during which she was allowed to be represented by counsel.

While the University may have violated its procedures during the investigation, this does not amount to a violation of the constitutional right to due process. “[F]ederal law, not state law or [University] policy, determines what constitutes adequate procedural due process.” *De Llano*, 282 F.3d at 1035. “Minimum procedural requirements are a constitutional guarantee and they cannot be enlarged or reduced by the internal [University] handbook outlining termination procedures.” *Id.* Accordingly, Tarasenko’s complaint fails to state a claim upon which relief can be granted for a violation of her rights to procedural due process.

C. Sex and National Origin

“The Eighth Circuit Court of Appeals has held that a § 1983 claim based on alleged violation of equal protection in the employment context is analyzed in

the same way as a Title VII claim of sex, race, or religious discrimination.” *Mummelthie v. City of Mason City, Ia.*, 873 F. Supp. 1293, 1333 (N.D. Iowa 1995) *aff’d* 78 F.3d 589 (8th Cir. 1996). At the summary judgment stage, “if the plaintiff lacks direct evidence of discrimination, the plaintiff may survive the defendant’s motion for summary judgment by creating an inference of unlawful discrimination under the burden-shifting framework established in *McDonnell Douglas*.” *McGinnis v. Union Pacific R.R.*, 496 F.3d 868, 873 (8th Cir. 2007). However, “a plaintiff need not plead facts establishing a prima facie case of discrimination under *McDonnell Douglas* in order to defeat a motion to dismiss.” *Hager v. Ark. Dep’t of Health*, 735 F.3d 1009, 1014 (8th Cir. 2013). Still, the plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.” *Id.* (quoting *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1965). “Such a statement must simply ‘give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.’” *Id.* (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512, 122 S.Ct. 992, 998, 152 L. Ed. 2d 1 (2002)).

In *Hager*, the court held that the allegation that the plaintiff “was discharged under circumstances summarily [sic] situated nondisabled males, younger people, or those that did not require leave or accommodation were not” was insufficient to raise the allegations above a speculative level. *Id.* at 1014-15.

Tarasenko alleges: that “Plaintiff’s compensation was less than similarly situated male professors”;⁷ that “Defendants’ conduct constitutes gender discrimination”; that the “acts and omissions . . . against Plaintiff . . . amount to disparate impact based on gender. Specifically, Defendants’ policies and practices relating to compensation, utilization of start up funds, and investigation of student allegations have a disparate impact on female professors;” and that the defendants “disciplined and terminated Plaintiff because of her gender . . . Defendants treated male employees who engaged in the same or similar alleged conduct more favorably.” ¶¶ 162, 190, 198, and 199. Although Tarasenko’s complaint gives a blow-by-blow account of the events that led to her termination, her sex discrimination allegations are conclusory, unsupported by any factual allegations. She identifies no comparable male employees who were treated differently, nor does she make any other factual allegations that would raise her sex discrimination claim above the speculative level.

Tarasenko’s claim that she was subjected to discrimination based on her national origin are similarly conclusory: she alleges that Gealt is of Russian descent and engaged in the conduct described in her complaint because he believed that she was of Ukrainian descent; that the acts and omissions of the defendants “amount to disparate treatment

⁷ Despite this allegation, Tarasenko has not alleged a claim under the Equal Pay Act, 29 U.S.C. § 206(d).

based on national origin"; that "Defendants' policies and practices relating to compensation, utilization of start up funds, and investigation of students allegations have a disparate impact on people of former Soviet Union descent"; and that "Defendants treated employees outside of Plaintiffs' protected class who engaged in the same or similar alleged conduct more favorably." ¶¶ 164-66, 202-04. These conclusory allegations fall short of the pleading standards of the Federal Rules of Civil Procedure as interpreted by *Twombly* and *Hager*.

While Tarasenko alleges that Bush made discriminatory comments regarding her national origin, these comments are not evidence of direct discrimination and are not enough to withstand a motion to dismiss. "Direct evidence is evidence that establishes 'a specific link between the [alleged] discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the employer's decision.'" *Twymon v. Wells Fargo & Co.*, 462 F.3d 925, 933 (8th Cir. 2006) (quoting *Putman v. Unity Health Sys.*, 348 F.3d 732, 735 (8th Cir. 2003)). It does not include "stray remarks in the workplace," "statements by nondecisionmakers," or "statements by decisionmakers unrelated to the decisional process itself." *Browning v. President Riverboat Casino-Missouri, Inc.*, 139 F.3d 631, 635 (8th Cir. 1998) (quoting *Price Waterhouse v. Hopkins*, 490 U.S. 228, 277, 109 S. Ct. 1775, 1804-05, 104 L. Ed. 2d 268 (1989) (O'Connor, J., concurring)).

The discriminatory remarks were allegedly made by Bush between 2006 and 2012 and include, “‘No grants-gulag,’ ‘No Happy Students-gulag,’ and ‘No publications-gulag.’” ¶ 76. Tarasenko informed the administrators for the first time about this on May 29, 2012. ¶¶ 70 and 75. According to Tarasenko’s complaint, Bush was involved in the decision-making process to the following extent: he was Tarasenko’s direct supervisor, took part in the investigation, informed Tarasenko that the allegations were being investigated on July 23, 2012 and participated in a meeting to discuss Tarasenko’s employment on August 30, 2012. ¶¶ 21-22, 106, and 133. Tarasenko does not allege that Bush was an actual decision-maker in this case, nor that there was a connection between Bush’s comments and the decision to terminate her employment. Gealt, Anderson and Robertson made the termination recommendation to Bobbitt, and Bobbitt made the final decision to terminate Tarasenko. ¶¶ 139-44.

In short, Tarasenko’s complaint fails to state a claim upon which relief can be granted for discrimination based on her national origin.

D. Free Speech

Tarasenko claims that she was terminated in retaliation for exercising her right to free speech. She generally describes her speech as “regarding educational quality, academic grading, grade appeals, and academic integrity.” ¶ 193. More specifically, she

alleges that she reported academic fraud by Eassa to UALR (¶ 52) and that she reported academic violations to the faculty senate executive committee (¶ 95).

“In the First Amendment context, when deciding whether a public employee’s speech is protected, the threshold question is whether the employee’s speech may be fairly characterized as constituting speech on a matter of public concern.” *Hylla v. Transp. Commc’ns Int’l Union*, 536 F.3d 911, 917 (8th Cir. 2008) (quotations, citations, and alterations omitted). “To decide whether speech addressed a matter of public concern, we examine the speech’s content, form, and context.” *Bausworth v. Hazelwood Sch. Dist.*, 986 F.2d 1197, 1198 (8th Cir. 1993). The focus is on the employee’s role in conveying the speech rather than the public’s interest in the topic. *Id.* “When focusing on the employee’s role, we consider whether the employee attempted to communicate the speech to the public at large and the employee’s motivation in speaking.” *Id.* “Unless the employee is speaking as a concerned citizen, and not just as an employee, the speech does not fall under the protection of the First Amendment.” *Buazard v. Meridith*, 172 F.3d 546, 548 (8th Cir. 1999). “When a public employee’s speech is purely job-related, that speech will not be deemed a matter of public concern.” *Id.*

Tarasenko was a professor at a public university and, according to her complaint, in that capacity reported academic fraud and academic violations to her employer. Her motivation in providing this information was not to communicate it to the public at

large but to communicate it to the University; and her role was that of a University employee, not a concerned citizen. This was not a speech of public concern and, therefore, was not protected speech under the First Amendment. *Cf. McCullough v. Univ. of Ark. for Med. Sciences*, 559 F.3d 855, 865-67 (8th Cir. 2009) (an employee's internal complaints about sexual harassment were not matters of public concern); *Kozisek v. Cnty. of Seward, Neb.*, 539 F.3d 930, 937 (8th Cir. 2008) (the first amendment "does not protect expressions made as part of the employee's job duties"); *Wingate v. Gage County Sch. Dist. No. 34*, 528 F.3d 1074, 1081 (8th Cir. 2008) (speech "as an employee concerned with the District's internal policies and practices" was not a matter of public concern).

Tarasenko's complaint fails to state a claim upon which relief may be granted for violation of her right to free speech under the First Amendment.

E. Title VII Retaliation

Tarasenko alleges that the defendants retaliated against her for engaging in activity protected by Title VII, including but not limited to her complaints of discrimination in the work place and comments about her national origin. ¶ 207. The factual basis for this claim appears to be Tarasenko's allegation that at a meeting on May 29, 2012, with Robertson, Pellicane, Gealt, Drale, Lewis, and Al-Shukri regarding Eassa's allegations against her, she informed them of ethnic

comments directed toward her by Bush between 2006 and 2012. ¶¶ 65-75. The defendants note that these comments were made more than seventeen months prior to the date that Bobbitt terminated her employment (November 18, 2013) and four months prior to the date that Gealt and Robertson recommended that she be terminated (September 19, 2012). The defendants argue that as a matter of law a four to eighteen-month time-gap is too long to support the inference of retaliation and that, in any event, Tarasenko does not allege that Bobbitt knew that she had reported Eassa's ethnic comments at the meeting on May 29, 2012. Tarasenko has not responded to defendants' arguments on this point. Therefore, the defendants' motion to dismiss Tarasenko's Title VII retaliation claims are granted.

F. State-Law Claims Against the University

The defendants have moved to dismiss all of Tarasenko's state-law claims against the University based on sovereign immunity. It is well settled that the University of Arkansas is the State of Arkansas for purposes of the Eleventh Amendment and therefore is immune from suit. *See Okruhlik v. Univ. of Ark. ex rel. May*, 255 F.3d 615, 622 (8th Cir. 2001); *Buckley v. Univ. of Ark. Bd. of Trustees*, 780 F. Supp. 2d 827, 830 (E.D. Ark. 2011). Furthermore, the University is immune from suit on Tarasenko's state-law claims by virtue of Article 5, Section 20 of the Arkansas Constitution. *See Arkansas Tech. Univ. v. Link*, 341 Ark. 495, 501-02, 17 S.W.3d 809, 813

(2000); *Grine v. Bd. of Trustees, Univ. of Ark.*, 338 Ark. 791, 798, 2 S.W.2d 54, 59 (1999). That immunity extends to actions against state officials in their official capacities. *Brown v. Ark. State Heating, Ventilation, Air Conditioning and Refrigeration, Licensing Bd.*, 336 Ark. 34, 38, 984 S.W.2d 402, 403-04 (1999). Consequently, all of Tarasenko's state-law claims against the University and the University administrators in their official capacities must be dismissed.

G. Tortious Interference With Contract

Tarasenko alleges that the individual defendants tortiously interfered with her contract with the University. "A party to a contract and its employees and agents, acting within the scope of their authority, cannot be held liable for interfering with the party's own contract." *Faulkner v. Ark. Children's Hosp.*, 347 Ark. 941, 959, 69 S.W.3d 393, 405 (2002). All of the actions taken by the individual defendants in this case were actions taken in their capacities as agents and employees of the University. Therefore, the complaint fails to state a claim upon which relief can be granted for tortious interference with a contract.

H. Tort of Outrage

To establish the tort of outrage under Arkansas law, a plaintiff must prove: (1) the defendant intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of

his conduct; (2) the conduct was extreme and outrageous, beyond all possible bounds of decency, and was utterly intolerable in a civilized society; (3) the defendant's actions were the cause of the plaintiff's distress; and (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it. *Crawford Cnty. v. Jones*, 365 Ark. 585, 597, 232 S.W.3d 433, 442 (2006). The Arkansas Supreme Court “takes a strict view in recognizing an outrage claim, particularly in the context of employment relationships.” *Id.* Tarasenko’s complaint does not meet this strict standard.⁸

CONCLUSION

Olga Tarasenko’s complaint fails to state a claim upon which relief may be granted and therefore is dismissed without prejudice. If Tarasenko wishes to file an amended complaint, she may seek leave to do so within thirty days from the entry of this Opinion and Order. If she fails to seek leave to amend her complaint within thirty days, a judgment will be entered dismissing this action without prejudice.

⁸ Because all of Tarasenko’s claims are dismissed, the Court will not address at this time the issues of whether the individual defendants are statutorily immune pursuant to Ark. Code Ann. § 19-10-305(a) and whether Tarasenko has stated a claim for punitive damages.

App. 32

IT IS SO ORDERED this 23rd day of October,
2014.

/s/ J. Leon Holmes
J. LEON HOLMES
UNITED STATES DISTRICT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 15-1159

Olga Tarasenko

Appellant

v.

University of Arkansas, et al.

Appellees

Appeal from U.S. District Court for the
Eastern District of Arkansas – Little Rock
(4:14-cv-00417-JLH)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Smith did not participate in the consideration or decision of this matter.

November 04, 2015

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Dr Tarasenko,

I would like to inform
you that student Mohammed
Lihani has requested for all
e-mails pertaining to research
be sent to him as well as
Dr. Tarasenko by B.C. attachment;
without her permission, which
would violate
my non-disclosure clause. Rachel Driga
April 9, 2012

Dr Taraseenko,

I would like to inform you that the student Mohammed Hihani has contacted me via e-mail and text concerning research that is covered by my non-disclosure act; I forward all conversations and text msgs to Dr Taraseenko; if any other information is needed please feel free to contact me.

Rachel Driga

R. Driga

4-19-12

1 Q Are you aware after he reviewed that he determined
2 you should receive an in progress?

3 A Yes.

4 Q I'm not going to go through all this because we
5 have gone over it multiple times. I'm just going to ask
6 you a few particular things.

7 I know Dr. Johanna Lewis has testified already in
8 here that you asked her to act as your faculty advocate
9 in this case; correct?

10 A Yes.

11 Q I think you understand she is the Associate Dean of
12 the Graduate School?

13 A Yes.

14 Q Is that why you asked her to serve as your
15 advocate?

16 A Yes. When I met her in May 11th at that time I was
17 very scared. I come with my project and I spend almost
18 half million dollars. They spend it on me and I return
19 to my home country with no success and I'm scared. I
20 didn't do anything. I'm scared. With my English if I
21 sit down with -- I need someone to help me. I asked her
22 if she could help me and she did. She agreed and she
23 didn't have any objection.

24 Q All right. Turn to page 109 we have had lots of
25 testimony in here about the way the grade appeal works.

ROBIN E. JOHNSON
BUSHMAN COURT REPORTING
(501) 372-5115

(4)

*audio
#6
000574
not directly*

1 A Either through me or through Dr. Al-Shukri,
2 Q Dr. Tarasenko was making some communications that
3 would maybe flow through you or Dr. Al-Shukri to the
4 Iraqi Cultural Office?
5 A Yes.
6 Q As I understand it, that was something that
7 occurred every six months or so. They would need an
8 update as to your progress; is that correct?
9 A Yes.
10 Q I believe you testified yesterday that there was --
11 I think you said five hundred thousand dollars. Was
12 that the right number or amount of money that had been
13 spent by your government for you to be here?
14 A Five thousand?
15 Q I thought you said five hundred thousand.
16 A I said almost from first day I enter USA till the
17 day I return it will be almost like that. With
18 ~~tuition~~ insurance and my salary, with everything.
19 Q So the total amount while you are here --
20 A Almost --
21 Q -- will be half million dollars? 500,000?
22 A Yes. Almost.
23 Q And help me understand. Part of that went to your
24 education, but it sounds like you had a salary as well?
25 A Yes.

ROBIN E. JOHNSON
BUSHMAN COURT REPORTING
(501) 372-5115

(8)

1 Q How much was salary?

2 A I think -- should I answer this question about my
3 salary?

4 MR. BELL: Yew. It's relevant.

5 WITNESS: Depends. First two months,
6 three months it was sixteen hundred and then
7 it increased to twenty-one hundred and then
8 increased to twenty-six hundred. Now it's
9 almost twenty-eight hundred. Sorry.

10 Thirty-seven hundred.

11 BY MR. POTTS:

12 Q So 3700 a month now is what you receive from your
13 government?

14 A Yes.

15 Q And you use that for your living expenses and to
16 clothe and feed your children and --

17 A It's just my salary. I have my -- I have some
18 extra for my clothes also. I have salary for all stuff
19 that -- I have a small amount of those money not
20 included with salary. Salary only just for life
21 experience. And I have all insurance for me and for my
22 two kids and my husband.

23 Q In February of 2012 you presented your defense and
24 left that. We talked about what happened there and that
25 you were upset. Did you fear that you might lose some

ROBIN E. JOHNSON
BUSHMAN COURT REPORTING
(501) 372-5115

(3)



Office of the President

February 7, 2014

VIA CERTIFIED MAIL
Return Receipt Requested
AND
REGULAR MAIL

Dr. Olga Tarasenko
7820 West Capitol Avenue, Apt. 406
Little Rock, Arkansas 72205

Re: Dismissal

Dear Dr. Tarasenko:

I am writing to follow up on your appeal to the Board of Trustees of your dismissal as a tenured professor in the Department of Biology at the University of Arkansas at Little Rock. As you are aware, on January 24, 2014, the Board of Trustees denied the appeal of your dismissal and upheld my decision of November 18, 2013 to reject the recommendation of the Hearing Committee dated July 25, 2013. Board Policy 405.1 requires that I communicate the decision of the Board of Trustees to you, although you have previously been made aware of it by your presence at the meeting. Also, this letter is notice to you that pursuant to Board Policy 405.1 IV(A)(12) your employment terminated on November 18, 2013, which is the date of my letter to you denying your appeal.

I request that you coordinate with your Chair and other appropriate administrators to take necessary steps to conclude your employment.

Sincerely,

A handwritten signature in black ink that appears to read "Donald R. Bobbitt".

Dr. Donald R. Bobbitt
President

cc: Chancellor Joel E. Anderson
Provost Zulma Toro
Interim Dean Ann Bain
Dr. John Bush
Mr. Dylan Potts
Mr. Jeff Bell

2404 North University Avenue / Little Rock, Arkansas 72207-3608 / 501-686-2505 / Fax 501-686-2506

University of Arkansas, Fayetteville / University of Arkansas at Little Rock / University of Arkansas at Pine Bluff
University of Arkansas for Medical Sciences / University of Arkansas at Monticello / Division of Agriculture / Criminal Justice Institute
Arkansas Archeological Survey / Phillips Community College of the University of Arkansas / University of Arkansas Community College at Hope
University of Arkansas Community College at Batesville / Cossatot Community College of the University of Arkansas
University of Arkansas Community College at Morrilton / University of Arkansas at Fort Smith
Arkansas School for Mathematics, Sciences and the Arts / University of Arkansas Clinton School of Public Service

The University of Arkansas is an equal opportunity/affirmative action institution.

**SYNTHETIC POLYMERIC CARBOHYDRATES RECOGNIZED
TOXOPLASMA GONDII TACHYZOITES AND INDUCED EARLY
PHAGOCYTOSIS BY MACROPHAGES**

**A Dissertation Submitted
to the Graduate School
University of Arkansas at Little Rock**

**in partial fulfillment of requirements
for the degree of**

DOCTOR OF PHILOSOPHY

In Applied Science

**with a concentration in
Bioscience, Parasitology**

**In the Department of Applied Science
Of the College of Science**

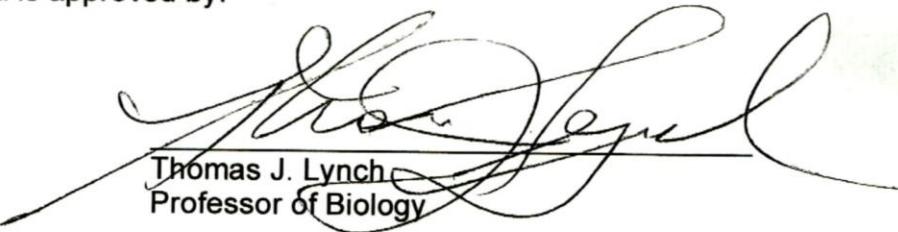
May 2013

Souzan Hussain Eassa

**B. V. M. & S. University of Mosul, Nineveh, Iraq, 1996
M.Sc. University of Duhok, Duhok, Iraq, 2003
M.S. University of Arkansas at Little Rock, Little Rock, Arkansas, USA, 2012**

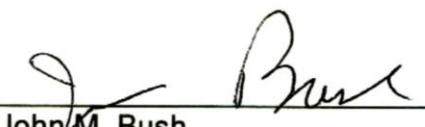
This Dissertation, "Synthetic Polymeric Carbohydrates Recognized *Toxoplasma gondii* Tachyzoites and Induced Early Phagocytosis by Macrophages," by Souzan Hussain Eassa is approved by:

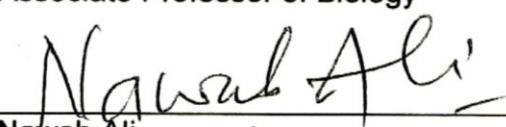
Dissertation Advisor:

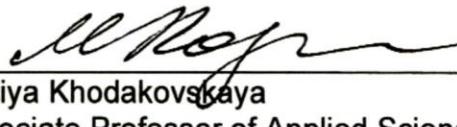

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